

# CASE CLOSED

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## IN THIS CASE...

the allegations against the insured podiatric physician were found to be without merit.



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## PATIENT AND CONDITION

The patient was 45 years old when she presented to the insured podiatric physician requesting surgery for a recurrent right bunion. Twenty years earlier, the insured had performed bilateral bunionectomies on the patient. She was happy with the results, so she returned to the insured when the bunions recurred. She had complaints of pain in her right first metatarsophalangeal joint (MPJ) when she wore high heels for an extended period of time.

## TREATMENT

The insured obtained a history which was unremarkable for any significant health issues. Upon physical exam, the insured noted bilateral hallux valgus deformities with pain to the medial and dorsal aspects of the MPJ, right foot. The insured referred the patient for X-rays. The X-rays showed prior surgical changes and marked hallux valgus deformity, bilaterally.

The insured recommended conservative treatment options, such as inserts, injections, NSAIDs and shoe gear changes. However, the patient was “very adamant” about having surgery on her right foot because of pain when wearing her dress shoes. The insured suggested she obtain a second opinion regarding surgery and scheduled a follow-up appointment.

The patient returned two months later. She had not obtained a second opinion and was still insisting upon surgery for her right bunion. She again refused conservative treatment. The insured discussed the risks and benefits of surgery with the patient and asked her to return for follow-up after she thought about it.

The patient returned six months later again requesting surgery. The insured obtained the patient’s informed consent and performed an Austin bunionectomy with Kirschner wire fixation of the right foot two days later.

At her first post-op visit six days later, the patient complained of mild pain in her right foot. The wound site was clean without dehiscence. The insured referred the patient for an X-ray of the right foot and advised the patient that she should remain on crutches, but could begin limited weight-bearing.

The insured obtained a history which was unremarkable for any significant health issues.

The patient returned seven days later for her second post-op appointment. She reported she had bumped her foot several times since her last appointment and was complaining of pain. The patient had not obtained her X-rays as ordered. The pin was intact, no dehiscence was noted, but the wound site was red and tender to the touch. The insured advised the patient to get X-rays of her foot as soon as possible that day. He prescribed Augmentin and scheduled a return visit in five days.

The patient was a no-show for her scheduled appointment, but returned to the office a week later. The patient related that she was too busy to keep her last appointment. She stated she was in mild pain, but much improved since her last visit. She was ambulating without difficulty.



The wound site was noted to be clean with no dehiscence and no erythema. There was a slight amount of forefoot edema and the pin was intact and secure. The insured referred the patient for X-rays. X-rays were obtained which showed the bone structure to be in good alignment.

At her next appointment a week later, the patient reported no pain in her foot. The surgical site was without drainage, erythema, edema or pain on palpation. The insured removed the pin and instructed the patient to get another X-ray.

The patient returned a week later. She had not obtained the X-ray. The insured instructed her on how to perform range of motion (ROM) exercises. She was instructed to remain in her post-op shoe.

The patient missed her next two appointments. When she returned a month after her last visit, she was wearing a soft shoe instead of her post-op shoe. She reported she did not do the foot exercises as directed because she was too busy. She still had not obtained an X-ray. The insured again asked her to get an X-ray, advised her on proper shoe gear and advised her to perform ROM exercises.

The patient did not keep her next appointment, but rescheduled for a week later. At that visit, she reported she was happy with the surgical result on her right foot and now requested surgical correction of her left bunion. She still had not obtained an X-ray of her right foot. The insured explained conservative treatment options and the risks and benefits of surgery on the left foot to the patient. The patient wanted to proceed with surgery on the left foot and the insured stated he would plan surgical care.

The patient's insurance carrier denied payment for the left bunionectomy and the patient did not return to the insured.

### **INJURY**

Approximately one year later, the patient saw another podiatric physician with complaints of excruciating throbbing pain, burning and numbness in her right foot which she reported had been present since the last surgery performed by the insured. X-rays were taken which showed subluxation at the 1st MPJ with the distal first metatarsal subluxed laterally, as well as degenerative changes at the joint. EMG and NCS studies of the right leg were normal.

The subsequent treating podiatric physician diagnosed right foot dysesthesias which he suspected was caused by injury to the cutaneous branch of the superficial peroneal nerve. He referred the patient to a neurologist who diagnosed her with neuropathy and arthritis. The patient was to follow-up with the neurologist, but never returned.

### **ALLEGATION**

- Inappropriate placement of the K-wire that was placed to stabilize the osteotomy site which prevented healing in a normal manner and loss of mobility.

The subsequent treating podiatric physician diagnosed right foot dysesthesias which he suspected was caused by injury to the cutaneous branch of the superficial peroneal nerve.

### **DEFENDING THE CLAIM**

- Upon review of the patient's medical records, there was no indication that her current right foot pain was related to the bunionectomy performed by the insured. Based upon the insured's records, the patient was not experiencing pain and was happy with the results of her surgery six months after the surgery. Additionally, the patient did not seek any medical treatment for right foot pain until a year after last treating with the insured podiatric physician.
- The podiatric expert for the defense felt that the placement and position of the K-wire was within the standard of care and met the goal to stabilize the osteotomy. The expert also felt the patient's reported symptoms post-surgery were inconsistent with a surgical nerve injury.
- The defense team, including the insured podiatric physician, agreed that this case was medically defensible and felt that if the patient had loss of mobility in her right great toe, it was related to the patient's failure to perform post-operative ROM exercises as instructed.

### **OUTCOME**

The defense was eventually successful in convincing the plaintiff to dismiss the lawsuit against the insured. While the outcome was ultimately favorable for the insured podiatric physician, the cost to the DPM was high. The insured had to endure three and a half years of the stress of being involved in a lawsuit.



## RISK MANAGEMENT POINTERS

Could the insured have done anything to prevent this meritless lawsuit? There were several clues prior to surgery that this patient might be problematic down the road:

- ▶ **At the initial visit** (for the surgery pertaining to this claim), the insured recommended conservative treatment options, but the patient refused and was “very adamant” about having surgery on her right foot because of pain when wearing her dress shoes.
- ▶ **The insured also suggested** she obtain a second opinion regarding surgery, but the patient did not follow through on obtaining a second opinion.
- ▶ **At the second visit**, the patient again refused conservative treatment.

When a patient demands surgery and is not following through with your instructions and recommendations preoperatively, it is a good indication that he/she will not adhere to your instructions and recommendations postoperatively. Such was the case here. The patient missed several postoperative appointments, failed to get X-rays and refused to perform ROM exercises.

While a particular procedure may be indicated, not all patients are good surgical candidates. If in the process of taking the patient’s initial history or in the course of treating the patient, he/she presents with certain “red flags,” you might want to consider other options. Red flags include:

- ▶ **The patient is demanding** surgery or dictating treatment.
- ▶ **The patient has unrealistic expectations** with regard to the surgical outcome.
- ▶ **The patient does not adhere** to instructions and/or recommendations.

While you do have a duty to provide the standard of care to your patients, you are not bound to provide treatment against your better judgment. If you and your patient cannot agree on a plan of treatment, consider formally terminating your relationship with the patient.

– **Barbara Bellione, RN, CPHRM, ARM**  
**Director of Risk Management**

