



Closed Claim Study

Risks and Benefits of Writing Off a Patient's Bill

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ALLEGATION

Performance of unnecessary cataract surgery and failure to diagnose and treat glaucoma.

DISPOSITION

Case dismissed by plaintiff just prior to trial.

Case Summary

An OMIC insured performed uncomplicated cataract surgeries one week apart. Following surgery, the patient had uncorrected visual acuities of 20/25+2 OD and 20/25 OS, with increased intraocular pressures of 27 and 28. The insured prescribed Ocuflax in the left eye and Lotemax in both eyes. During subsequent visits, the patient complained of a foreign body sensation, tiredness, and irritation in both eyes; a throbbing pain and seeing a yellow ring behind the left eye; and glare and light sensitivity. Suspecting migraines, the insured advised the patient to have an MRI, which was normal.

The patient did not return to the insured's office for three months, against the insured's advice, but did seek treatment from another ophthalmologist, who documented 20/20 vision without correction bilaterally and diagnosed a posterior vitreous detachment in the right eye. The patient eventually returned to the insured complaining of dry eyes, sharp pain, light sensitivity, and headaches. The insured's impression was a neuralgic pain problem, and he referred the patient to a corneal specialist. The corneal specialist could not find a treatable diagnosis based upon his examinations. A third ophthalmologist treated the patient with punctal plugs and diagnosed chronic open angle glaucoma.

Analysis

The patient did not allege any malpractice against the OMIC insured until a dispute arose over payment of the cataract surgeries. The patient then claimed that she had been informed by the insured's staff that her health insurance plan would cover all costs of the surgeries; post surgery, however, she learned that only 70% of the costs would be covered. The insured and his staff disputed the patient's claim but agreed to write off 10% of the costs, leaving the patient responsible for paying 20%. The patient refused to pay and when the insured pursued these costs through litigation, the patient filed a counter suit alleging medical malpractice. Specifically, she alleged that the

OMIC insured performed unnecessary cataract surgery on the left eye and failed to diagnose and treat glaucoma.

OMIC retained an attorney on behalf of the insured and had the case reviewed by both cataract and glaucoma experts. Another expert was retained to opine on whether any of the patient's other health conditions, fibromyalgia, irritable bowel syndrome, or skin cancer, could have caused her ocular complaints. A summary jury trial was held prior to the actual trial during which jurors heard an abbreviated version of the defendant's and plaintiff's arguments and then issued a mock ruling on the case. The jury ruled 6-0 in favor of the defense. When interviewed by the attorneys, the jurors were so overwhelmingly in favor of the OMIC insured that the plaintiff decided to dismiss the case just prior to the start of the actual trial.

Risk Management Principles

When there is an unanticipated outcome followed by a dispute over billing, OMIC insureds are strongly advised to contact OMIC for advice on how to proceed. OMIC staff can help the insured weigh various options, such as setting up a payment plan, waiving or reducing fees, facilitating a second opinion, and offering the patient additional emotional support. In this situation, the patient faced multiple illnesses and hearing that doctors could find no objective reason for her eye complaints may have been more than she could bear. Rather than address the toll that her condition was taking on her, both she and the surgeon focused on the billing issue, which led to an impasse. OMIC certainly supports a physician's right to be paid for care provided and works vigorously to defend insureds who meet the standard of care, as we did for this ophthalmologist. Our ultimate goal, however, is to avoid litigation entirely because this is generally in the best interests of all parties. Lawsuits are time consuming and stressful and take time away from one's practice. Some insureds decide fairly readily to waive their fees when it seems a prudent strategy to avoid litigation. Some do so as a compassionate gesture to the patient or to engender or sustain good will in their community. Whatever decision the insured ultimately makes, OMIC wants it to be a well-informed one.