

Meritless Cases: Why Do Patients Sue

Meritless Cases: Why Do Patients Sue



Figure 1.

Meritless Cases

- Good Medicine
- Adequate documentation



Figure 2.

Meritless Cases: What's The Cost

- Time
- Stress
- Financial loss



Figure 3.

How Can I Avoid A Meritless Suit

- Improve communication
- Optimize patient selection
- Sharpen your documentation skills



Figure 4.

Case 1

- Severe LT foot pain
- Injury January
- Surgery March
- Persistent pain
- Has seen several docs w/o improvement
- Presents to insured DPM's office 7/14



Figure 5.

Case 1 Findings

- 46 yo female
- 200#
- Pain 2nd and 3rd MPJ's
- X-rays show fractured 3rd met head with screw present



Figure 6.

Case 1 Recommendations

- MRI
 - Bone marrow edema
- Probable Sx



Figure 7.

Case 1 Sx

- Sx intended ORIF
- Met head 50% destruction
- Head resected
- Implant unsuccessful
- Left as 3rd met head resection
- Path



Figure 8..

Case 1 FU

- Persistent pain
- Path results
- 3 weeks post op admitted
- HW removal w bone bx 2nd met head
- Labs normal
- Radiculopathy



Figure 9.

Case 1 Post Hospital Discharge

- Healed uneventfully
- Path
- No Follow up past suture removal



Figure 10.

Case 1 Lawsuit

- Allegations
 - Performance of inappropriate surgery
 - Failure to provide proper follow up care
 - Failure to diagnose and treat foot infection
 - Failure to assure sterile surgical technique/hardware
 - Failure to provide proper post surgical instructions
- Defense expert
 - NO deviation from SOC



Figure 11.

Case 1 Lawsuit

- Outcome
 - Defense motion for summary judgment granted!
- Analysis
 - Suit filed due to post op complication
 - Communications issue



Figure 12.

Case 1 Red Flags

- Previous surgery with poor outcome
- Multiple opinions



Figure 13.

Case 1 Positives

- Documentation
- Testing and follow up on results



Figure 14.

Case 2

- 27 yo female
- Painful HAV and TB B/L
- Good documentation of potential risks and expected postoperative recovery



Figure 15.

Case 2

- Sx left foot 11/19/08
- Z osteotomy 1st and 5th mets
- Recovery unremarkable
- Notation at 2 wks that patient is concerned of big toe moving back under 2nd toe “like it was before sx”



Figure 16.

Case 2

- Sx RT foot 12/23/08
- Z osteotomy 1st and 5th mets
- Recovery uneventful
- At 3 months notation of having lost “a degree” of correction, discusses poss additional Sx for more “perfect” result
- Left that further treatment dictated by pt.'s symptoms



Figure 17.

Case 2

- At 4 mo some pin prominence RT
- 5 mo requests op notes, going to see another doc
- Requests x-rays at 9 mo.
- Attorney records request at 14 mo



Figure 18.

Case 2 Lawsuit

- Allegation
 - Insured removed too much bone “disrupting the sesamoid joint space”
- Defense expert opinion
 - no deviation from SOC
 - Unfortunate outcome that was recognized by the insured



Figure 19.

Case 2 Lawsuit

- Outcome
 - Plaintiff dismissed case
- Analysis
 - Subsequent treating physician critical of procedure choice
 - Critical of failure to send to PT
 - Pt dissatisfied w/ insured's explanation regarding post op complication



Figure 20.

Case 2 Strengths

- Recognition and documentation of under correction/loss of correction
- Excellent informed consent



Figure 21.

Case 2 Points For Improvement

- Time between surgeries 11/19 and 12/23
- Length of follow up
- Communication



Figure 22.

Case 3

- 67 yo female
- 5'3" 210#
- Painful bunion RT
- Medial deviation 2nd toe/MPJ
- Previous Sx for HAV LT
- “Hurts all the time, I want my foot fixed”



Figure 23.

Case 3

- Pre op appt 8/6/10
- Pt voices understanding of consent
- Husband states she was “Not the best Pt” with her previous surgery
- Important with her obesity to follow instructions w “NWB and elevation”



Figure 24.

Case 3

- Sx 8/30/2010
- Austin bunionectomy and Weil 2nd RT
- POV 1 9/7/10
- + edema
- “admits she has been up, making lunches and not following rules as far as protection and elevation”



Figure 25.

Case 3

HPI: This nice lady was seen yesterday and called today. She had gone out on her own and rented a wheelchair and wanted approval so that she could get it from Medicare. We will go ahead and okay this for the next 10 days. However, I told her that she was simply trying too hard and was not cooperating and just refused to get off of her foot. Being in a wheelchair with or without the leg extended is still too much stress. She is swelling, having troubles and she needs to be off of her foot. This was fully made plain to her once again as I did yesterday and will try again today. She is just simply not cooperative at this point and I made it clear to her that she needs to get off of it, get it elevated and get some ice on her foot.



Figure 26.

Case 3

- Sutures removed 2 wks
- Return to shoes 3 wks
- 4 wks postop ROM “a little tight”
- EHL weak
- Rx AROM and PROM exercises



Figure 27.

Case 3

- 7 wks post
- No dorsiflexion strength
- Hallux in plantarflexion
- EHL torn
- Recommends EHL repair or possible fusion



Figure 28.

Case 3

- 11/2/10
- 1st MPJ arthrodesis w plate fixation
- Posterior splint NWB 3 wks
- 3 wk visit note



Figure 29.

Case 3

HPI: Follow-up of left first MPJ arthrodesis. Patient came in using her crutches, but had weight on the foot against everything we have ever discussed. She stated that she was having trouble using the crutches and balancing. This is the first that she has mentioned this. The wound and foot are both doing well. By observation she is having no pain other than an occasional shooting pain about the mid-foot area. I believe that she is ready to get into an Aircast walker and definitely need to do this as she has been walking on the foot far more than is safe and more than she had been instructed. Today, prescription written for Aircast boot at Snell's and made arrangements for her to get there. Washed and redressed her foot. Wrapped with Ace-wrap as we have been doing each visit, along with Coban. She had no other questions and no other concerns.
RTC: Two weeks.



Figure 30.

Case 3

- 11/24/10
- 3 wks postop
- Rx Air Cast




Figure 31.

Case 3

- 12/6/10 (5 wks)
- X-rays
 - Loosening distal screw
 - 1st MPJ some gapping
- Continue in boot




Figure 32.

Case 3

- 1/12/11 (9 wks)
- Presents w/o boot FWB in shoes
- No pain, no motion
- X-rays “not showing solid bone formation
- Fibrous nonunion




Figure 33.

Case 3

- 2/8/11 (13 weeks)
- c/o feels like “walking on glass”
- Pain under 2nd MPJ
- Tx FF balance pad




Figure 34.

Case 3

- 2/17/11
- Prominence and POP 2nd MPJ
- X-rays show plantar displacement of Kwire
- 2/18/11 K-wire removal in OR
- 2/28/11 no pain, discharged




Figure 35.

Case 3 Lawsuit

- Allegations
 - Failure to take proper steps to determine the true nature of the patient’s condition
 - Failure to use appropriate skill and knowledge of a similarly trained physician
 - Failure to properly attend, inspect, evaluate and treat plaintiff
 - Failure to use reasonable care under the circumstances for the examination, evaluation and treatment of the plaintiff
 - Failure to diligently ascertain all available facts and reports and collect information essential for proper Dx and Tx of plaintiff




Figure 36.

Case 3 Lawsuit

- Defense expert
 - Opinion that insured met SOC
- Outcome
 - Lawsuit dismissed by pt



Figure 37.

Case 3 Strengths

- Informed consents detailed and thorough
- Drawings and descriptions



Figure 38.

Case 3 Points For Improvement

- Communication
- Tone of documentation
- Pt/procedural selection
- Pre op PT eval.
- Obtain prior records
- Tincture of time



Figure 39.

Case 4

- 59 yo male, 200#
- Painful bunion RT foot and 2nd MPJ
- Hx gout
- Tx labs, colchicine, ibuprofen, inserts
- On f/u labs normal, no improvement on meds
- Subsequent arthritis panel
- MRI
 - No stress fx
 - Severe osteoarthritis 1st and 2nd MPJ's



Figure 40.

Case 4

- Sx 12/24/09
- Procedures
 - Lapidus RT
 - Exostectomy 2nd met head
 - PIPJ arthrodesis 2nd RT
 - FDL tenotomy 2nd RT
- Post op
 - NWB CAM walker



Figure 41.

Case 4

- Nonunion Lapidus
- Tx w bone stimulator
- Did not consolidate



Figure 42.

Case 4 Lawsuit

- Allegations
 - Failure to obtain informed consent
 - Defense expert
 - Pt is an attorney and signed 2 separate consents pre op
 - Case very defensible
- Outcome
 - Jury verdict for defense
- Reason for suit
 - Pt felt that the insured failed to disclose adequate information about the risks and potential complications of the Sx



Figure 43.

Case 4 Strengths

- Solid preop workup/conservative care
- Preop medical clearance



Figure 44.

Case 4 Points for improvement

- Specifically list nonunion on consents for any fusion and osteotomy
- Cast vs. boot
- Preop PT for older pt in cases requiring post op NWB
- Scooter?
- Alternate procedural selection



Figure 45.

Case 5

- 48 yo female
- Painful 1st MPJ w limited ROM
- Dislocated 2nd MPJ
- Tx Mobic, OTC inserts
- Custom O's
- Injections
- Overall 4 years cc



Figure 46.

Case 5

- Sx 8/19/09
- 1st MPJ implant LT, Excision neuroma B/L and exostectomy 5th RT



Figure 47.

Case 5

- Initial post op unremarkable
- 6 wks PO stubs 5th toe, subsequent infection w MRSA
- Tx Bactrim/Rifampin
- Allergic Rxn to Rifampin
- ER visit CP/SOB
- Infection resolves



Figure 48.

Case 5

- Sx 8/19/09
- Sub 2 pain and non purchasing hallux 1/19/10
- Tx O's, sling pad
- Continued pain
- Sx recommendation for FHL tagging and Weil
- Pt lost to f/u



Figure 49.

Case 5 Lawsuit

- Allegations
 - Negligence in inappropriately performing Sx
 - Inappropriate surgical procedure
 - Negligent transection of flexor tendon during Sx
- Defense expert felt insured met SOC
 - Insured Tx pt conservatively for several years
 - Performed Sx when pt. reached point of total intolerance to pain
 - Implant surgery was indicated due to severe DJD
 - Sx was appropriately performed
 - Cock-up deformity is a known complication of procedure



Figure 50

Case 5 Lawsuit

- Outcome
 - Jury verdict for defendant



Figure 51.

Case 5 Strengths

- Extensive conservative care
- Thorough informed consent, verbal and graphical



Figure 52.

Case 5 Points for improvement

- Did patient truly understand procedure
- Procedure selection in active younger pt
- Degree of bone resection
- Prophylactic tagging of flexor w implant procedures



Figure 53.

Case 6

- 44 yo male
- LT ankle sprain
- Initial Tx NWB post splint x 2 weeks
- Subsequent Tx Unna boot and Fx boot NWB
- Pain decreased at 3 weeks
- Discussed casting vs. Primary repair



Figure 54.

Case 6

- Sx 2/6/09
- Primary repair ATFL and CFL
- Post op NWB x 6 wks
- PWB in boot and PT at 6 wks



Figure 55.

Case 6

- Progress out of boot at 9 wks
- Concern of stiffness and swelling



Figure 56.

Case 6

- 12 weeks post op
- “Pt is discouraged with his recovery because he has such a lack of ROM in his ankle”
- Still using a crutch to help ambulate
- -3 degrees DF
- X-rays exostosis anterior distal tibia
- Continue ROM
- Discussed possible need for exostectomy



Figure 57.

Case 6

- 16 week
- Subjectively better
- Continued gait alteration
- Continued limitation ROM on exam
- Continue ROM exercises
- Discussed possible scope
- F/U PRN



Figure 58.

Case 6 Lawsuit

- Allegations
 - Negligently advised pt to have surgery that was not indicated
 - Failure to treat with non-surgical treatment of patient’s symptoms
 - Negligently performed procedure resulting in the ligaments being reattached too tightly and that nerves were cut or damaged
- Influencing factor
 - Subsequent treating ortho critical of care, stated Sx not indicated and complication of stiffness due to Sx



Figure 59.

Case 6 Lawsuit

- Pt dissatisfied with post op ankle stiffness and loss of mobility
- Defense expert
 - SOC met
 - Sx was indicated and surgical technique was within SOC
 - Ankle stiffness is a known potential complication
- Outcome
 - Plaintiff abandoned suit



Figure 60.

Case 6 Strengths

- Good documentation
- Consent specifically listed stiffness



Figure 61.

Case 6 Points For Improvement

- Communication
- Better pre op discussion on length of recovery and risks
- Maintenance of patient care
- Referrals



Figure 62

Meritless Cases: Why?

- Poor outcome
- Sense of abandonment
- Poor patient selection



Figure 63.

Risk Reduction Strategies

- Communication strategies
- Ask the patient questions
- Involve the patient's family
- Previous records
- Follow patients to full resolution
- Consultations
- Be wary of additional surgery



Figure 64.



Figure 65.