

# Orthopedic Surgery Malpractice Claim Review

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A 60-year-old man developed pain, swelling and weakness in his right lower leg following knee replacement surgery. His orthopedic surgeon did not diagnose a popliteal pseudoaneurysm until six weeks post-op, leaving him with a permanent nerve injury and mobility problems.

## Specialty

- Orthopedic surgery

## Allegations

- Improper performance of total knee arthroplasty
- Improper management of surgical patient

## Facts of the claim

An orthopedic surgeon performed a right total knee arthroplasty (TKA) on a 60-year-old man with a history of right knee pain and osteoarthritis. Six days post-op on a Friday afternoon, the man called the orthopedist's office complaining of pain and swelling in his right knee and calf. The office staff told the man to keep his orthopedic appointment the following week and to follow the post-op instructions of using ice and elevation for swelling. The next week, the orthopedist examined the man who was still complaining of right lower leg pain, swelling and weakness. The orthopedist ordered a venous duplex exam, which showed no evidence of a deep vein thrombosis.

Over the next several weeks, the man continued to complain of pain, swelling and weakness in his right lower leg for which he called the orthopedist's office several times. Six weeks after surgery, the man went to his local hospital emergency department (ED) with complaints

of right lower leg pain, swelling and weakness. The ED physician ordered a Doppler ultrasound of the right knee, which showed a pseudoaneurysm of the popliteal artery. A vascular surgeon was consulted, and he performed a repair of the pseudoaneurysm.

The man suffered a permanent nerve injury and foot drop. He was unable to return to work and later filed a malpractice claim against the orthopedist alleging improper performance of surgery, failure to obtain informed consent and improper post-op management.

## Disposition of the claim

The malpractice claim was settled against the orthopedist.

## Risk and patient safety perspective

The experts who reviewed the care felt that the popliteal artery was injured during surgery, causing the man to develop the pseudoaneurysm which put pressure on the peroneal nerve, leading to the nerve injury and foot drop. The experts were critical of the delay in diagnosing the pseudoaneurysm, considering the man made repeated complaints of pain, swelling and lower leg weakness. The experts were also critical of the orthopedist's office team in the handling of the man's telephone calls complaining of continued symptoms.

The man testified that he complained of severe pain and swelling post-op but that the surgeon did not listen to him. He also testified that the orthopedist did not tell him that a nerve injury was a possible risk and complication of surgery. However, the informed consent form the man signed prior to surgery did note that this was a possible risk of surgery.

## Top malpractice allegations against orthopedic surgeons

In an analysis of Constellation malpractice claims asserted between 2010 and 2017, surgical allegations are number one in occurrence and number two in cost. Surgical performance- and management-related allegations are the top allegations. The most frequently cited clinician responsible for care at the time of an alleged injury in surgical claims is orthopedics, accounting for 28% of claims and 20% of costs. The most common injuries involved in orthopedic surgical claims included the need for additional surgery (11%), nerve damage (9%) and pain (9%).

### Our clinical analysis of these orthopedic surgery claims reveals that they are driven by:

- Pre-operative decision-making and communication challenges
- Intra-operative technique and complications
- Post-operative judgment and communication failures

### The top contributing factors driving performance-related allegations (those events that occur within the walls of the operating room) are problems with:

1. Technical skill and technique, including known risks of the procedure not recognized during surgery (88%)
2. Clinical judgment
  - a. Patient assessment (22%)
  - b. Selection/management of surgical procedure (21%)
3. Patient factors – seeking other care due to dissatisfaction with the orthopedic surgeon's care (35%)

### The top contributing factors driving management-related allegations (steps taken managing patients pre-, intra- and post-op) are problems with:

1. Clinical judgment
  - a. Selection/management of surgical procedure (51%)
  - b. Patient assessment, including failure to recognize symptoms and failure to respond to repeated symptoms (52%)
2. Technical skill and technique, including knowns risks of the procedure (60%)
3. Communication with patients and family including poor rapport, informed consent and discharge instructions (31%)



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*"What I appreciate about Constellation is that they are always analyzing their malpractice claim data and providing resources for their customers to proactively manage risk."*

— Matt Quinn, Business Development Executive, IMA

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## Risk and patient safety strategies

Understanding the factors driving orthopedic patient injuries and resulting malpractice claims is a first step in protecting patients, orthopedists and their organizations. "Orthopedists and their office teams should review their risk and patient safety program and consider the following recommended strategies," says Matt Quinn, former orthopedic practice administrator and current Business Development Executive at IMA Financial Group. "At IMA we focus on each health care client as a unique organization in order to develop a professional liability program that protects the organization. We work closely with Constellation to ensure orthopedic practices have the coverage and risk services you need."

### For orthopedic surgeons:

- Use a pre-operative risk assessment and stratification system including a full review of surgical risk factors and previous surgical histories and/or co-morbidities, including visits with specialists for each co-morbidity, to ensure readiness for surgery
- Ensure full consideration of all available clinical information, including medical-surgical history, previous complications and input from specialists when determining surgical procedure/approach
- Employ evidence-based guidelines to manage risks, including surgical site infections, venous thromboembolism prophylaxis and acute pain management (including prescriptions opioids)
- Improve and maintain technical skills and practice with awareness for nerve and adjacent structure injury
- Facilitate regular case review conferences to maintain perspective on surgical treatment decisions
- Implement a patient-centered shared decision-making model for educating and obtaining informed consent that includes a discussion of realistic expectations and goals
- Use web-based patient education and informed consent tools to supplement the informed consent discussion and reinforce expectations
- Educate patients and families on key signs and symptoms of post-op complications and encourage them to speak up with any concerns

### For orthopedic office care teams:

- Implement a trigger protocol to communicate among the care team during transitions of care
- Provide education for surgical office team members responsible for telephone or electronic communications with patients regarding symptoms or questions
- Utilize evidence-based written protocols for triaging patient symptoms
- Document all communication with patients in the medical record concerning informed consent discussions, post-op instructions and post-op communication regarding symptoms
- Train your care team in empathetic communication with patients and families

#### Resources

[AAOS Patient Safety](#), which includes:

- Clinician checklists
- Information and position statements
- Surgical risk reduction toolkit
- Pain relief toolkit

CDC Surgical Site Infection

<https://www.cdc.gov/infectioncontrol/guidelines/ssi/index.html>

Empathetics Neuroscience of Emotions

<http://empathetics.com/>

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