Litigating Through The Eye of a Needle: A Claims Example

When an insured acupuncturist met with Patient X for the first time, the patient complained of insomnia and general body aches and pains. The acupuncturist worked at a very large massage clinic, and it was the clinic’s internal procedure to insist that all new patients receive a full explanation as to the nature of and the risks inherent with the proposed treatment. The patient was required to sign a patient acknowledgment and consent form prior to any treatment being performed. The consent form specifically advised the patient that results are not guaranteed, and that risks such as minor bleeding, bruising, pain, nausea, fainting, infection, and perforation of internal organs are possibilities with any acupuncture treatment.

The acupuncturist explained the treatment she was proposing, as well as the risks involved, and asked Patient X to sign the consent form. Patient X waved her off and advised he was in a rush and didn’t have time to read and sign the document. He would read it at home and bring it in signed the next time. The insured proceeded to perform the treatment. Patient X returned six more times for treatment, each time failing to bring the consent form, but promising to read it and sign it for the next appointment.

On the last appointment, Patient X brought his girlfriend with him. While the needles were inserted, the Insured had to advise Patient X multiple times to remain prone and not to move, as Patient X kept on moving around while carrying on a heated conversation with his girlfriend. After the needles were removed, Patient X stood up and advised that he felt faint. He then complained of severe chest pain, nausea, and trouble breathing. The Insured immediately called an ambulance. Patient X was diagnosed with a punctured lung and was treated in hospital for 12 days. He then commenced an action against the insured alleging negligence and seeking $150,000 for pain and suffering, as well as special damages, loss of future income, costs, and interest. The Insured reported the claim to Trisura.

Trisura confirmed that coverage was available for this matter, and retained experienced counsel to represent the Insured. During the course of litigation, Patient X maintained the position that the risks inherent with the procedure had never been explained to him, and that he had never seen, nor been asked to sign a consent form. The Insured disagreed. Patient X insisted that he would not have agreed to treatment if he had known all the risks. He also denied having moved at all during treatment, and said that he had not spoken to his girlfriend while the needles were inserted. It therefore became an issue of credibility between the parties.

Given the facts, and in particular, the failure to follow proper clinical procedures and insist on a signed consent form before treatment was even commenced, settlement negotiations commenced to avoid a lengthy trial and a probable finding of liability against the Insured. The matter settled for $42,000. In addition to the settlement amount, the insured’s defense costs were in excess of $20,000. Trisura retained counsel, paid the legal fees, and paid to settle the claim.

Lessons learned:

1) Importance of following consent procedures that have been put in place
2) Litigation is expensive and can often come down to he said/she said
3) Professional Liability insurance can save you a lot of money in the event of a claim