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OPHTHALMOLOGY NEWS

MALPRACTICE WEB SITES FOCUS ON LASIK LAWSUITS

by Michael Moretti Contributing Editor

Several web sites offer medical and legal advice to disgruntled LASIK patients as litigation volume increases.

Lasikinfocenter.net takes a provocative stance, but refuses to say who's behind it

Laser in-situ keratomileusis vision correction surgery malpractice lawsuits are on the rise, due in part to a growing number of web sites that encourage dissatisfied patients to sue surgeons. LASIK malpractice web sites garnering attention include seattleclassaction.com, lasikdisaster.com, and lasikinfocenter.net.

"The medical community has artificially set standards to determine success," said Kenneth M. Keith, Esq., a principal at Keith, Shapiro & Ford in Garden City, N.Y. "I have a number of clients who see 20/40 or better using the Snellen acuity chart after LASIK, yet have horrible functional vision and horrible night problems. This has caused severe psychological and operational issues. I believe the medical community is hiding behind their artificial standard, while at the same time saying they are doing a good job. This is nonsense."

Keith predicts that wavefront diagnostic technology will become the most significant event to change the landscape of LASIK malpractice. "These devices for custom ablation are able to objectively validate the claims of the patient," he said. "I will then be able to show a jury on a screen exactly what is wrong with my client's vision."

Keith considers himself "probably the lightning rod for LASIK malpractice in the United States, and I am more involved than any other attorney in the country." Reportedly, he evaluates one new case a day, but says he is extremely selective. Currently, he is pursuing litigation for about 12 clients and claims that large awards are being granted.

"Eye injury, absent enucleation, used to be worth no more than about \$600,000. But we're now beginning to see \$1.2 million or \$1.7 million settlements for LASIK complications," Keith said. "Some ophthalmologists, who otherwise practice good medicine, are not following the guidelines for LASIK. When a surgeon can perform 100 LASIK procedures a week, which is not that unusual, and makes \$1.5 million a month, sometimes that surgeon's vision gets blurred to what he should be doing properly."

"Poor screening is a major reason why people suffer LASIK complications," said Ron Link, founder of the Surgical Eyes Foundation in May 1999. Link is a former Ohio firefighter who had to give up his profession because of unsuccessful radial keratotomy in 1985 that "pretty much devastated my life."

Link, who now lives in Tampa, Fla., said, "People should have the option to pursue legal redress if they have been harmed due to negligence, lack of informed consent, medical device malfunction, or practice outside the standard of care." His web site usually inspires a daily telephone call or e-mail message about potential LASIK malpractice. "But our main thrust is visual rehabilitation," Link said.

Although some web sites are more altruistic than others, the American Optometric Association is not happy that lasikinfocenter.net is using its name and logo on the main menu under "special thanks." "Until you contacted us, we were unaware of this," said Thomas Eichhorst, Esq., house counsel for the AOA. "We are not affiliated with their web site in any way. But we will certainly follow up." The names and logos of the National Federation of the Blind also appears under "special thanks."

Jeffrey J. Machat, MD, national medical director for TLC Laser Eye Centers in Toronto, believes that patients file most LASIK lawsuits a full 2 or 3 years after surgery. "These patients have reached such a level of frustration with their eyesight that they are seeking other remedies or they have gone through multiple surgeries over the past few years to improve their vision," Machat said. For the most part, these patients' "energies are misdirected. It is unfortunate that LASIK has become the focus of their lives."

It doesn't help "that there is a lot of information on the Internet about LASIK that isn't very accurate," Machat continued.

To counter the negative perceptions and inaccurate information people have been receiving about LASIK, the American Society of Cataract and Refractive Surgery will be launching a public information campaign in June. "We encourage people to get accurate and balanced information about the procedure," said John Ciccone, ASCRS director of communications.

Jim Kelley is an insurance agent with Coverage, Inc., the brokerage that partners with ASCRS to offer medical malpractice and other insurance coverage to ASCRS members. He believes that the majority of LASIK lawsuits are frivolous or overstated. "I find it appalling that a person who changes from 20/200 vision to 20/30 or 20/25 can successfully sue for not achieving 20/20. Let's not forget that the doctor restored vision." In any event, Kelley said, it is rare for a plaintiff to receive a sizable settlement. "LASIK has not been a major malpractice concern in ophthalmology, although there is concern about long-term outcomes," he said. "Nothing is perfect. There is always a human factor."

Kelley, who has undergone LASIK, believes the answer to stemming the tide of LASIK lawsuits is tort reform and "doctors doing a better job on informed consent. I also feel some doctors hype the procedure and are thus creating false expectations."

Consequently, "most of our insurance companies won't insure doctors who advertise guaranteed results," Kelley said.

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