

# *PPIC Closed Claim Case Review*

## **Risk, Response, and Reward: Breast Cancer Screening**

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### Abstract

Regular breast self exams (BSE) are a woman's first line defense when diagnosing breast cancer. The second are routine screening mammograms, x-rays used to detect changes in breast tissue of women who have no outward signs or symptoms of cancer. Screening mammograms, typically involving a couple x-rays of each breast, make it possible to detect tumors that can't be palpated. These screenings can also detect microcalcifications that occasionally indicate the existence of breast cancer. If a lump is felt, then a diagnostic mammogram is performed. The diagnostic mammogram may take longer due to the technician having to magnify the suspicious area to produce a detailed picture so the physician can make a more accurate diagnosis.

### Overview

This case involves a 58-year-old female who had recently relocated and denied having a primary care physician. She stated that the insured, a pulmonologist, told her he could function as her primary doctor and manage her various medical morbidities and medications. She had a history of high blood pressure, hypothyroidism, and edema. She said the insured told her she would need to visit routinely, so he could keep a close check on her because of her medications. It was her understanding that she would not need to see another doctor unless he referred her to one.

In late 2001, the claimant noted a lump during her BSE of the left breast. She characterized it as the size of a marble. Because the patient considered the insured to be her primary care physician, she called him to report the lump and make an appointment. She was advised by a staff member that a mammogram had been scheduled for her a few days later at the local hospital.

Before going for her mammogram, the claimant stopped at the insured's office to pick up the order/referral form, which identified the reason for the mammogram as a "breast mass" and was stamped with the insured's signature. She gave the slip to the radiology technician who performed the mammogram and showed the technician where the lump was in her left breast. She did not receive any mammogram results at that time.

A few days later, one of the primary doctor's office nurses called her to report that the mammogram was "fine, everything is all right." When the claimant asked about the lump, she was told that it was probably a calcium deposit. The insured never spoke to her about the mammogram results or the lump. The claimant accepted this diagnosis because she had previously had a lump in the right breast that had showed no malignancy and had eventually disappeared. She thought that this lump would also.

The claimant denied that anyone told her to be seen if the mass persisted, even though it was the recommendation given by the interpreting radiologist on his report of the mammogram. She further denied that any of her healthcare providers informed her that a biopsy would be the only definitive means for determining whether a lump was benign or malignant.

When the claimant saw the insured at a regularly scheduled office visit three months later in early 2002, they did not discuss the lump or the mammogram, nor did the physician perform a breast exam. Since the claimant thought the lump would eventually go away, she was not worried. She just reported that she did not feel any change in the lump during her monthly BSE's over the three-month period. She considered the lack of any change reassuring.

The patient next saw the insured in early summer 2002 who asked no questions about her breast or the lump. No breast exam was performed. Her next appointment was scheduled for early fall 2002.

Prior to this scheduled visit, the claimant noticed that the lump was larger. She in fact reported that in a three week period of time, the lump grew from the size of a marble to the size of a tennis ball. Because she already had a scheduled appointment, she did not seek an earlier one. She testified that because of the rapid change in size of the lump, she thought she had cancer, yet she did not call the insured's office or seek a referral to any other physician.

When she saw the insured at that next appointment, the patient reported the lump's rapid change in size and her concern about it. The insured advised he would send her for a mammogram and refer her to a surgeon who had previously treated her. According to the claimant, the insured did not perform a breast examination nor do anything in connection with the breast lump other than order another mammogram and refer her to the surgeon.

The claimant received the results of the second mammogram during her visit with the surgeon, which occurred approximately three weeks later. She was advised that she needed a biopsy. She learned from her husband that the surgeon had reported things did not look good. The surgeon later explained that she would need to undergo a modified radical mastectomy, which involved the removal of her entire left breast and the lymph nodes in the armpit.

Before the mastectomy was performed, the surgeon purportedly explained to the claimant that the cancer in her left breast was often a "mirror cancer" that would likely come back in her right breast. Nevertheless, he did not encourage a double-mastectomy. Cancer was found in three of the sixteen lymph nodes removed and the mass was larger than the surgeon originally expected. The surgeon referred the claimant to an oncology group.

Understandably, as with many cancer treatments, the claimant suffered many side effects of treatment. She understands that further bone scans, blood work, etc. are necessary to check for cancer markers as her cancer can come back at any time.

### Expert Opinion

Two primary issues seem to repeat in the expert's reviews. They include failure to perform a breast exam and failure to refer to appropriate provider.

The plaintiff's first expert testified that because the insured had been functioning as the primary care physician for the previous six years, the standard of care required performance of annual physical examinations to include a complete review of medical problems, performance of complete physical exam, obtaining lab tests, gynecologic exams, and breast/colon cancer screening. There was no indication that the insured had completed these physical exams, which was a breach of the standard of care. The expert also pointed out that "if palpable nodules persist then one should consider ultrasound or removal." Standard of care required examination of the claimant to evaluate the breast nodule or referral to either a gynecologist or surgeon for evaluation to prevent a delay in the diagnosis of breast cancer.

The plaintiff's second expert testified that the insured breached the standard of care by neglecting to perform breast examinations and mammography between the first six years the claimant saw the insured. Furthermore, once the lump was noticed, the eleven month delay in diagnosis and treatment resulted in the progression of the disease from Stage II to Stage III.

The plaintiff's final expert testified that the insured breached the standard of care by failing to pursue further examination and testing of the breast mass. Like the second expert, he stated that if a palpable nodule persisted then ultrasound or removal of the nodule should be considered. This physician, an oncology specialist, testified that diagnostic mammography does not substitute for a breast examination and that a breast lump must be biopsied, despite negative mammogram readings.

The defense expert noted that the insured acted as the primary physician for several years. As a result of his care involving non-pulmonological issues, the defense expert's opinion was that the insured should have performed regular physical exams and, given the claimant's age, referred her for annual mammograms. The defense expert also opined that the insured failed to act on the radiologist's recommendation following the first mammogram. He could not defend the insured's actions.

The case settled for \$1.5 million.

### Discussion

Breast cancer is the most common type of cancer affecting women in the United States, with a reported two million survivors living today (National Cancer Institute, 2005). The National Cancer Institute estimates that 182,460 new cases of breast cancer will be diagnosed in 2008. Sadly, there will also be 40,480 women who die because of this terrible disease. All women are at risk for developing breast cancer. The chances of getting it may be low, moderate, or high, depending on a number of risk factors. Age, personal/family history, health habits, and race are just some of the factors to consider. The Physicians Insurers Association of America (PIAA) Data Sharing Reports show that the most common and second-most expensive diagnosis resulting in claims against physicians is breast cancer.

## Risk Prevention Strategies

What can be done to reduce the delay in diagnosis of breast cancer? With the intent of the risk management suggestions being to improve care of patients and to lessen professional liability costs, the PIAA makes several recommendations. These should not be interpreted as the standard of care. Some tips include:

- o Document patient-reported breast symptoms
- o Document personal and family history of breast cancer
- o Request information about the results of any previous mammograms
- o Follow up with consultants regarding test results, etc.
- o Do not delay diagnostic studies due to patient pregnancy
- o Perform tissue diagnosis on a palpable lump with a negative mammogram
- o Perform a thorough breast examination on every female patient as part of a physical exam, regardless of age or reported symptoms
- o Educate the patient on the need for further studies and document this fact
- o Provide routine follow-up examinations

## Summary

According to the American Cancer Society, only 1 or 2 mammograms out of every 1000 lead to a diagnosis of cancer. Approximately 10% of women will get a report indicating that they need additional mammography, and of these, only 8-10% will need a biopsy. Of those, 80% will not be cancer. Breast lumps are actually very common, especially in premenopausal women, and they normally go away by the end of the menstrual cycle. Do not ignore changes in the breast, though. A physical examination by a health care provider can confirm the presence of breast changes, and can tell a lot about a lump by carefully palpating the lump and the tissue around it. Benign lumps tend to feel different than malignant ones.

## References

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