Malpractice and Optometry: Video (Not So) Grand Rounds

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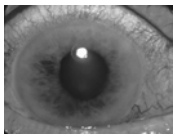
Misdiagnosis of intraocular disease is the leading cause of liability claims involving optometrists:

- **Glaucoma**
- **Retinal detachment**
- **Tumors affecting the visual system**

And what is the most common reason these diseases are missed?

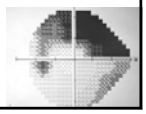
Glaucoma is the number one cause (in terms of numbers) of large claims:

- **Open-angle glaucoma**
- **Angle closure glaucoma**
- **Secondary glaucoma**


The principal reasons that optometrists misdiagnose open-angle glaucoma are:

- **Failure to detect indications of disease involving the optic nerve (asymmetry, changes in C/D)**
- **Not checking or recording IOPs**
- **Failing to follow-up on suspicious findings with a field test**

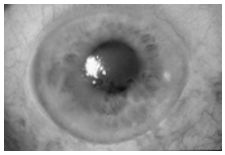


To minimize the risk of misdiagnosis, an optometrist should:

- **Perform tonometry routinely**
- **Observe the optic nerve steroscopically**
- **Document IOPs and C/Ds**
- **Use automated visual fields to rule out disease in suspicious cases**

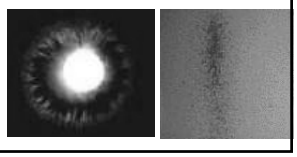
For patients with angle closure glaucoma, it is simple to minimize risk:

- **See the patient!**
- **Post-dilation complaints require assessment, even on Friday afternoons**



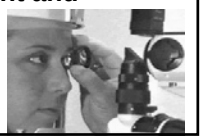

The secondary glaucoma most often causing litigation is pigmentary glaucoma:

- The most common reason for misdiagnosis is failure to follow-up on suspicious findings
- The most common clue is pigment on the endothelium



Suspicious findings:

- Must be communicated to the patient…
- And documented!
- Testing to rule out disease must be initiated or performed, and…
- If a patient does not return for testing, it is wise to contact the patient and reschedule the exam



Example case: pigmentary glaucoma

- Female patient, late 20s
- Wanted to be fit with extended wear contact lenses
- During slit lamp exam with a trial lens Krukenburg's spindle was noted
- The doctor did not have time to do a full exam, but scheduled the patient to return the next morning after wearing the lens overnight
- She did not return for a year

Observe how the lawyer uses the lack of documentation to rebuke the doctor's assertion that he had informed the patient of the suspicious finding and had planned to perform a glaucoma workup the next day.

Testimony Traps

- Contributory (or comparative) negligence can be used to cast blame on the patient, as in this case
- But can the patient be held negligent for not returning for a contact lens follow-up?
- The jury did not find the patient at fault under these facts

Retinal detachment is the number two most-misdiagnosed disease:

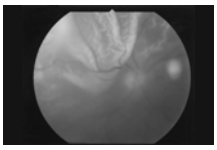
- A few cases result from failure to schedule a same-day examination although symptoms are suspicious for detachment
- More cases result from failure to dilate the pupil and examine the retinal periphery with a BIO for at-risk patients
- But most cases result from PVD

Triage of complaints is essential:

- The office receptionist must be able to recognize complaints that require same day examination
- The doctor is responsible for delays that result in reduced or lost vision
- Retinal detachment is the number 1 cause of malpractice claims for failure to triage correctly

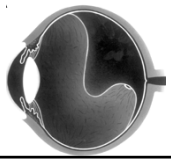
At-risk patients should be given a dilated fundus examination:

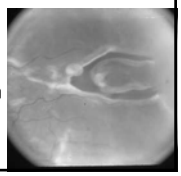
- Symptoms of detachment
- Significant myopia (over -6 D)
- Ocular trauma
- Lattice degeneration
- Pseudophakia
- Capsulotomy
- Proliferative retinopathy
- History of detachment in fellow eye



Acute onset, symptomatic posterior vitreous detachment is the most common cause of claims against optometrists:

- The most common error is failing to detect a retinal detachment associated with the PVD
- The standard of care is complex



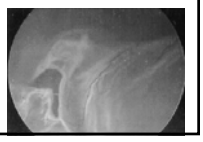


The standard of care for acute onset, symptomatic PVD is:

- Examination of the retinal periphery with a BIO
- Informing the patient whether the PVD is fully separated or not
- If not fully separated, warning the patient of the symptoms of retinal detachment
- If not fully separated, scheduling the patient for follow-up in 2-4 weeks

The most common mistakes are:

- Failing to recognize that the PVD separation is incomplete and thus capable of causing detachment, and
- Thus failing to warn the patient of the symptoms of detachment, and
- Thereby failing to schedule the patient for follow-up in 2-4 weeks



Example case: PVD

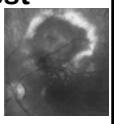
- 2 day history of unilateral acute spots
- Dilated exam and BIO performed, no retinal breaks noted—diagnosis is "PVD" and plan is "reassure, return PRN"
- A month later there is a bright flash of light in the eye, but the patient does not realize this is an urgent symptom
- Retinal detachment is diagnosed after 6 day delay

Note how the doctor is trapped into admitting that telling the patient about the symptoms of retinal detachment was necessary if the PVD was incomplete, and that failure to bring the patient back in 2-4 weeks breaches the standard of care in such a situation.

Testimony Traps

- The record must reflect whether the PVD is fully separated
- If not separated, warnings and rescheduling are required
- If fully separated, make it clear that any warning to the patient about the symptoms of detachment applies to a future PVD in the fellow eye

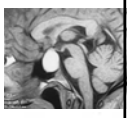
Tumors are the source of the largest claims for damages involving optometrists—to date, the largest judgment awarded exceeds $9 million



- Intraocular tumor cases are most frequently due to malignant melanoma (adults) and retinoblastoma (infants)
- Brain tumor cases most often involve pituitary adenoma (adults) and craniopharyngioma (children)

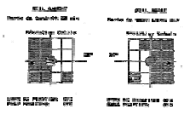
Brain tumor claims are brought more frequently than intraocular tumor claims

- A disproportionate number of claims have involved pediatric cases
- A common error has been failure to determine the cause of reduced visual acuity (“amblyopia”)
- Another error has been failure to perform a visual field test



To minimize the risk of misdiagnosis, an optometrist should:

- Always determine the cause of reduced acuity or have a plan to determine the cause—and document it
- Attempt a visual field, even with a young patient
- Seek a second opinion if called for—but there is joint liability in such cases



Example case: pediatric brain tumor

- Six-year-old boy having trouble with headaches has +1.50 error OU
- A fundus evaluation is performed at the exam, but not a visual field test
- Doctor prescribes glasses, but child’s acuities get worse at 2 subsequent exams over about a 6 month period
- One year after first exam, acuities are 20/100 and 20/200
- Craniopharyngioma is diagnosed

In this case, the doctor is forced to try and defend his decision not to attempt a visual field on a 6-year-old child, without a clinically defensible basis for not doing so.

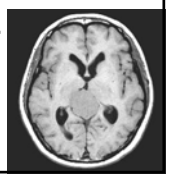
Example case: adult brain tumor

- **Long-term contact lens wearer complains of decreased distance acuity (to 20/40 from 20/25)**
- **Patient has mild refractive amblyopia and early cataract**
- **Doctor attempts refit unsuccessfully, refers to a contact lens specialist, who advises use of a different type of lens**
- **Pituitary adenoma is diagnosed by MD about 6 months later**

In this case, note how the lawyer uses the patient record to show that the doctor never determined why visual acuity was getting worse.

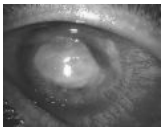
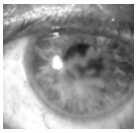
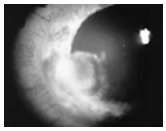
Testimony traps

- **Drops in acuity occur for a reason—does the record explain why?**
- **Don't hesitate to run a field if there is uncertainty about the diagnosis**
- **Make sure the refractive error will cause amblyopia before calling it that**

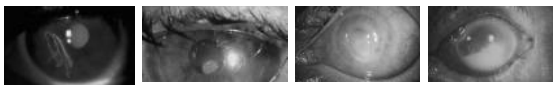


About 25% of malpractice claims involve the anterior segment, most frequently:

- **Contact lens related abrasions that become corneal ulcers**
- **Corneal infections from herpes simplex**
- **Fungal infection following corneal abrasion with embedded organic material**

Contact lens-related corneal ulcers are found in about 70,000 patients a year; abrasions that are not appropriately managed and become ulcers most frequently cause litigation; most cases involve patients who wear lenses overnight.



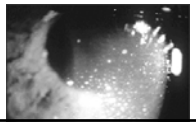
In these cases injury is typically due to failure to timely diagnose the ulcer or by the use of an improper antibiotic regimen.

To minimize the risk of misdiagnosis:

- **Be selective when fitting overnight wear patients; use informed consent agreements to structure care**
- **Use a broad spectrum antibiotic sensitive for *Pseudomonas* if corneal abrasion occurs after overnight wear**
- **If the cornea does not timely respond to treatment, try another drug regimen**

Uveitis is an important cause of anterior segment liability claims involving primary eyecare and ophthalmologists.

Claims have also involved optometrists where vision loss is suffered secondary to recurrent episodes of uveitis caused by an underlying systemic condition that was not diagnosed.



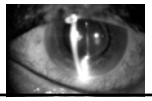
Example case: recurrent uveitis

- **Woman in her 20s presented with a 2 year history of recurrent red eye OS**
- **Conjunctivitis was diagnosed and treated, but there were 2 more episodes over 1 ½ years before iritis was diagnosed**
- **Clinical laboratory tests were ordered but the results were negative**
- **Afterwards, another episode resulted in greatly reduced acuity in the eye**

Observe how the lawyer creates the impression that after lab testing resulted in negative results the optometrist didn't know what else to do, and thus did nothing, thereby contributing to subsequent vision loss.

Testimony traps

- **If there is recurrent red eye, especially bilaterally, uveitis resulting from underlying systemic disease must be ruled out**
- **If initial clinical laboratory testing is negative, a plan for further evaluation of suspected systemic causes should be discussed with the patient and implemented**
- **Referral for clinical testing is appropriate, whereas failure to order tests is not**



The other 25% of malpractice claims involving optometrists are based on:

- **Injuries from spectacle lenses and frames (about 20% of claims)**
- **Ophthalmic drugs (an indirect cause of injuries)**
- **Comanagement**

The most likely cause of injury from ophthalmic lenses is breakage of a glass, high index, or allyl resin (CR-39) lens.

Frames are a less likely cause of litigation, but safety and sports frames have been involved in liability claims.

The key error is failure to prescribe polycarbonate plastic (or Trivex) when protection is a key clinical consideration; the patients for whom protection is necessary include:

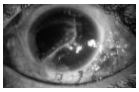
- **Monocular persons**
- **Athletes**
- **Workers whose occupations place them at special risk for injury (e.g., police)**
- **Children**
- **Individuals with compromised corneas (e.g., RK, LASIK, penetrating keratoplasty)**

A second error is failure to warn patients of the limited impact resistance of ophthalmic materials other than polycarbonate or Trivex (i.e., glass, allyl resin (CR-39), high index).

This warning is especially important when a secondary use (e.g., playing baseball) makes wear of the lens material hazardous.

Example case: injury from shattered spectacle lens

- **Myopic, physically active man in his 20s needs new glasses**
- **Optometrist performs an examination, writes a spectacle prescription**
- **While playing softball, one of the lenses is struck by the ball and shatters**
- **Permanent loss of vision in the eye results**



Notice how skillful questioning causes the doctor to actually testify that he breached the standard of care by failing to take an adequate history and by not prescribing protective eyewear for secondary sports use.

Testimony Traps

- **Patient histories should always include avocational use of eyewear!**
- **Make sure polycarbonate plastic (or Trivex) is specified on prescriptions when protection is a key clinical consideration**
- **For ametropic patients playing contact sports, eyeguards meeting ASTM F803 standards or contact lenses should be prescribed**

The most frequent source of drug-related claims is a "slip and fall" injury due to mydriasis (pupillary dilation).

Angle closure is a rare cause of claims.

Therapeutic drugs are not a significant cause of liability claims for optometrists.

When pupils are dilated patients can experience photophobia and reduced acuity, which increase the risk of falls—thus premises need to be inspected periodically to ensure that they are safe.

Elderly patients or patients with infirmities may require assistance.

Disposable sunglasses should be provided, and patients must be warned to use caution while walking, driving, or working after pupils have been dilated.

Documentation of the warning is essential.

Dilation warning JGC

In this case, the lawyer uses the fact that the doctor does not know what was said or done by staff, and that the staff members cannot remember the exact details because of the passage of time, to virtually eliminate their defense.

Example case: "slip and fall" on premises

- **Elderly patient is given dilating drops by a staff member**
- **After the exam, the patient is allowed to leave the office without mydriatic spectacles**
- **The bright light outside strikes his eyes as he starts down the office steps**
- **He falls and breaks his hip, with ensuing disability from complications**

Testimony Traps

- **It only takes seconds to document that a dilated patient was warned—just do it!**
- **Staff must ensure that patients either have their own sunglasses or receive mydriatic spectacles**
- **At a minimum, offer to assist elderly or impaired patients through areas of office ingress and egress**

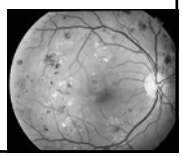
Comanagement of patients with physicians is a growing source of litigation for optometrists. It is considered to be a "joint venture", in which both comanaging practitioners may be held liable for negligence committed by one.

Formal comanagement is used for the post-operative care of patients who have undergone cataract or refractive surgery.

Informal comanagement exists for the care of patients with diabetes.

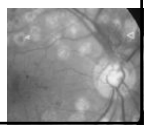
Diabetic retinopathy is a significant cause of liability claims

- **Ophthalmologists are sued for diabetes more often than any other type of physician**
- **The largest award in an eye malpractice case was $13 million—due to misdiagnosed retinopathy by an ophthalmologist**
- **Retinopathy-related claims against optometrists are on the rise**



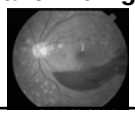
Diabetic retinopathy is a potential source of litigation because:

- **Whether type 1 or type 2, most diabetic patients will suffer retinopathy over time**
- **Vision loss is preventable if retinopathy is timely diagnosed**
- **Standard protocols have been developed for the examination of diabetic patients—and for therapeutic intervention**



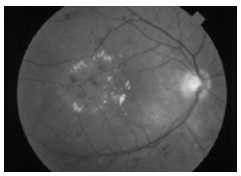
The standard of care for management of patients with diabetes is complex:

- **Annual (or more frequent) eye examinations with pupillary dilation are required**
- **Education about the need for continuing care should be provided to patients**
- **The physician managing the disease must be informed of significant findings**
- **If treatment is needed, it must be timely provided**



Optometrists are most often involved in diabetes cases because:

- **The doctor fails to refer the patient in a timely manner for treatment of retinopathy—usually because of misdiagnosis**
- **Early Treatment Diabetic Retinopathy Study guidelines should be followed**



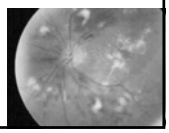
Example case: Diabetic retinopathy

- **Type 1 diabetic patient for 20 years, under seemingly adequate control**
- **Doctor diagnoses open-angle glaucoma and background retinopathy**
- **The optometrist starts treatment for the glaucoma, but in 6 months the patient returns with proliferative retinopathy and macular edema OU, and a pre-retinal hemorrhage**
- **Despite laser treatment, the patient suffers significant loss of acuity in both eyes**

Notice how the lawyer emphasizes that the severity of the retinopathy and macular edema implies that the doctor initially misdiagnosed the patient's condition and that even if background retinopathy was found the patient should have been referred to an ophthalmologist.

Testimony traps

- **Be able to defend the instrumentation used for examination**
- **If possible, take fundus photographs**
- **Document findings both for the macula and for the surrounding retina**
- **Comply with Early Treatment Diabetic Retinopathy Study guidelines for follow-up examinations and treatment**

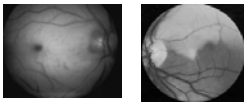


This presentation has illustrated how poor documentation or lack of documentation can adversely affect the defense of a malpractice claim.

However, proper documentation can defeat a claim and result in exoneration.

Example case: retinal artery occlusion

- **64-year-old diabetic patient not seen in 3 ½ years complains of visual field defect OS**
- **Doctor diagnoses mild non-proliferative retinopathy and floaters in both OS and OD**
- **About 2 weeks after the examination the patient has sudden vision loss and is found to have central retinal artery occlusion OD and branch artery occlusion and field loss OS**
- **Despite treatment, the patient is left with only a partial field OS**



Although the patient's lawyer has an MD expert who says that the artery branch occlusion in the left eye was likely present when the optometrist examined the patient, note how the optometrist is able to provide documentation that effectively refutes this contention.

Testimony Traps

- **Document all warnings (e.g., reduced VA, dilation, suspicious findings)**
- **Make referral and recall appointments for a date and time certain and document them in the record of care**
- **Use descriptive language for findings (e.g., C/D=.4, 2+ cells and flare)**
- **Keep copies of all prescriptions, letters, or results of testing, and hold on to patient records for as long as practicable**

Do not overlook the documentary value of photographs and of retinal imaging!

Many thanks to my colleagues at UAB for their assistance in making the video depositions:

- **Melanie Archibald, OD**
- **John Amos, OD, MS**
- **Joe Benjamin, OD, PhD**
- **Jimmy Bartlett, OD**
- **Mike Loop, PhD**
- **Bob Rutstein, OD**
- **Lisa Schifanella, OD**
- **Leo Semes, OD**
- **Gerald Simon, OD**
- **Tammy Than, OD**

Thank you for your attention!