

PODIATRY MALPRACTICE OF NEW YORK

Podiatry Malpractice

I have taken a special interest in podiatry and have handled hundreds of podiatric malpractice cases. In addition to other activities in the podiatric community, I am a regular lecturer to the Podiatric Residents at the Mt. Sinai Medical Center's Podiatric Residency Program. I have had the privilege to be an observer in various operating rooms in private, podiatric offices and have witnessed most foot surgeries including bunions, hammertoes and heel spurs. Many lawyers who are not familiar with podiatry cases either consult with me on behalf of their client or ask me to handle the case as outside counsel.

Podiatric malpractice is a mistake by a podiatrist which results in injury to the patient. In legal terms, it is a deviation from podiatric standards of care.

Podiatric malpractice cases commonly involve disabling foot injuries in the areas listed below.

Bunion Surgery
Lack of Informed Consent
Heel Spur Surgery
Hammertoe Surgery

Diabetic Ulcers
Unnecessary or Multiple Surgeries
All Podiatric Surgery
As Your Attorney

Bunion Surgery

Correction of a bunion deformity is one of the most common podiatric surgeries performed. Although the bunion appears to be a bony bump on the side of the large joint of the big toe, it is actually more than that. It is an abnormal angulation of the 1st metatarsal and the 2 bones making up the big toe.



There are many surgical ways to fix this condition and most commonly the bones are cut and repositioned. Most podiatrists use a screw or pin to keep the bones aligned. Whether these metallic devices are used or not, the most important thing is that the bones are properly re-aligned during surgery and stay in their new position until they heal.

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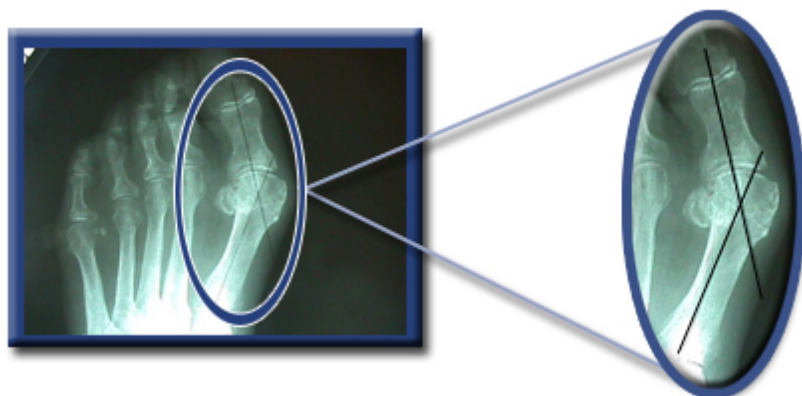
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The 1st metatarsal bone is almost always cut (e.g., an "Austin" procedure) in the re-alignment. Sometimes one of the smaller bones in the toe has to be cut (e.g., an "Akin" procedure) as well. These are necessary to get the angled bones, and big toe, back into a more normal position. The bunion bump itself is cut off too.

A bunion may return but usually many years later, if at all. When a bunion is still present after surgery, or if it comes back weeks or a few months later, or if the big toe "drifts" away from the second toe ("Hallux Varus"), it is likely that something was not done correctly during surgery.

There are many techniques for surgically fixing a bunion. The Austin procedure involves a cut near the head of the 1st metatarsal bone. A "base" osteotomy involves a cut at the base or bottom of the 1st metatarsal bone. Some patients even need a fusion of a joint because their bones have too much flexibility.

One of the most fundamental principles of "bone correction" is the calculation of important angles and other measurements. The podiatrist makes these calculations on the pre-operative x-rays by drawing certain lines and measuring the angles formed by the lines.



The common angles the podiatrist looks at are the intermetatarsal angle, the hallux valgus angle, the PASA, the DASA, and the metatarsal protrusion distance. Some podiatrist who do not make these measurements claim they simply "eye-ball" the x-rays which is another way of saying they guess the measurements. They also say that they have performed hundreds of surgeries and no longer need to precisely measure the angles. These podiatrists usually have a difficult time explaining how their bone cuts were off or why the patient came out worse after surgery. It is just like a contractor saying he has built hundreds of buildings before and doesn't need building plans anymore.

An old method of bunion correction was the simple "shaving off of the bump." It is used on the elderly if used at all these days. This procedure does not correct the real problem in most patients and is considered malpractice if that is all the podiatrist does. However, some podiatrists do not explain the details of what they intend to do and just tell the patient "we will just shave some bone." Telling the patient only this limited amount of information is malpractice. Technically, it is called "lack of informed consent" because the podiatrist is not giving the patient all of the accurate information before getting the patient's consent to the surgery.

Many Podiatrists use a template or standard form as their "operative report" for most of their surgeries. In most cases, when there is a problem during surgery, the operative report will make NO mention of it. In that case, before and after x-rays will usually show what happened.

Lack of Informed Consent

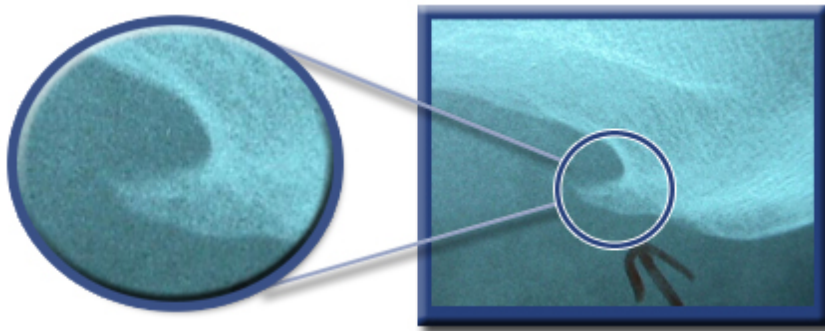
The law states that the podiatrist, or any health care provider, must get the patient's consent to the surgery *after* giving the patient *information* including the risks, benefits, and alternatives to surgery, including NOT HAVING THE SURGERY at all.

Most consider a signed consent form, without explanation, inadequate to get the patient's informed consent. The podiatrist should sit down with the patient and verbally explain the surgery.

Some podiatrists get the patient's consent moments before the surgery. Some consider that to be bad practice. More important is whether the patient is calm enough to understand the details of the procedure and all the risks and alternatives. Most patients would rather not have this important information moments before surgery but rather days or weeks before the surgery so they can discuss it with their family or friends or just take their time and think it over.

Heel Spur Surgery

A heel spur is bony growth on the bottom of your heel bone (the "calcaneus").



It was thought that heel pain, usually more severe in the morning, was due to the bony spur. Current thinking is that the pain is from the pulling of the tissues attached to the bone (the "plantar fascia"). Surgery to cure this kind of heel pain is usually aimed at releasing part of the plantar fascia from the heel bone. This can now be done endoscopically or by the traditional "open surgery" where an incision is made.

For this condition, it is crucial for the podiatrist to try all non-surgical treatments before suggesting surgery. The reason for this is that it is known that non-surgical treatment can eliminate much of the pain in many patients. In this case, surgery would not be needed. It is so important to try all non-surgical treatment that many insurance companies will not pay for heel spur surgery without the podiatrist first proving he or she gave the patient all of the non-surgical treatments.

Malpractice in this area usually involves not trying all treatments before surgery. Or, it can involve injury to parts of the inside of the foot due to carelessness or inexperience. Nerve injuries are common. Sometimes the podiatrist mistakenly cuts more of the plantar fascia than what is intended.

The podiatrist cannot, and should not, guarantee that your heel pain will be better after surgery. However, if your pain is worse after surgery, your podiatrist should find out why and not simply tell you that "these things happen." We find that after a thorough investigation it turns out that for those who are worse after surgery, a mistake was made during surgery.

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