

# *Anesthesia* & the **LAW**

*A Professional Liability Newsletter for Anesthesiologists*

**Fall 1995**

## ***Jury Returns Defense Verdict for Insured Anesthesiologist***

**P**laintiff, a 39 year old, 264 lb. male, underwent an 8 hour rodding and fusion of his lower back under general anesthesia. Following surgery the patient was noted to have numbness and blistering on the forehead and chin. Subsequently, the patient experienced a 1.5 by 3.5 cm area of alopecia (hair loss).

Plaintiff's lawsuit alleged improper padding and positioning resulting in numbness, pain and disfigurement. In addition, plaintiff's wife claimed loss of society and companionship based upon the fact she did not like her husband's appearance without a full beard.

The defendant/anesthesiologist testified the patient was in a proper prone position with his face in a 6 inch thick foam pad. According to the medical records, positioning of the patient's head was checked 14 times during the course of the procedure, lifted and repositioned. Dr. Kita Patel,

an anesthesiologist at Mt. Sinai Medical Center in Milwaukee, has studied position related alopecia. In testimony for the defense, Dr. Patel confirmed that the anesthesia team had taken proper precautions in padding, positioning, and frequently checking and repositioning the patient's face. She further testified that in spite of such precautions, pressure injuries can occur, especially in lengthy surgical procedures and in those involving obese patients.

Plaintiff's demand prior to trial was \$75,000. Preferred Physicians Mutual made no offer. Following a three day trial, the jury returned an 11 to 1 verdict in favor of the anesthesiologist. Diana Moore and Marcia Cook of the Blackwell Sanders law firm defended the case. Diana Moore may be reached in Overland Park, Kansas, at (913) 354-8400. ❖

## ***Supervised Anesthesia Receives Unfavorable Media Attention***

**R**ecent media attention has focused a highly unfavorable light on supervised anesthesia, i.e., delivery of anesthesia by a CRNA under the direction of an anesthesiologist. Stories on ABC's *Day One* and *Good Morning America*, and on the *Donahue* program all highlighted adverse outcomes that allegedly implicated supervised anesthesia.

While we question the journalistic balance given this issue, recent courtroom observations suggest that these television programs have registered with the public.

Shortly after these programs aired, Preferred Physicians Mutual successfully defended a positioning injury case (see the above article). Following the defense verdict,

Preferred Physician's Vice President of Claims, Steve Sanford, and Defense Counsel, Diana Moore, interviewed the jurors.

Despite an 11-1 defense verdict, four supportive jurors offered unsolicited comments regarding the anesthesiologist's absence in the operating room during portions of the procedure. Two of these jurors cited recent television programs as a source of their concern.

Based on these comments, policyowners may wish to review their informed consent procedures to insure that patients are aware of, understand and accept the use of a CRNA. Attorneys handling anesthesia claims should be aware of such perceptions and be prepared to address their impact on potential jurors. ❖

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## ***Florida Jury Finds in Favor of Policyholder***

**P**laintiff, a 67 year old male, underwent triple bypass surgery under general anesthesia. During the operation, Preferred Physicians Mutual's insured/anesthesiologist attempted to place a Swan-Ganz catheter in the right internal jugular vein. After failing to locate the internal jugular with a finder needle, the anesthesiologist placed a catheter in the subclavian vein without complication.

Post-operatively the patient experienced respiratory distress and was re-intubated. Upon extubation the patient complained of hoarseness and difficulty swallowing and was diagnosed with paralysis of the vocal cord. The patient was treated for these conditions which subsequently appeared to have resolved.

Plaintiff's expert, Dr. Lavigna, testified that damage to the patient's hypoglossal nerve

resulted, in his opinion, by direct trauma from the needle inserted to locate the jugular vein.

The defense relied on the testimony of Dr. Nikolaus Gravenstein from the University of Florida. Exhaustive research by Dr. Gravenstein revealed no reported hypoglossal nerve injuries related to placement of a Swan-Ganz catheter in the internal jugular. Using anatomical exhibits, Dr. Gravenstein demonstrated the most likely explanation for the injury to be the re-intubation which was necessary to save the patient's life and was not a deviation from the standard of care. The jury agreed and returned a verdict in favor of the anesthesiologist.

Kimberly Cook of the law firm Fowler White Burnett Hurley Banick & Strickroot defended the case. She may be reached in Miami, Florida, at (305) 789-9200. ❖

## ***Warmed IV Bags Continue to Result in Claim Settlements***

**P**referred Physicians Mutual continues to receive reports of injuries associated with the use of warmed IV bags to position patients. Two recent claims resulted in settlements of \$35,000 each.

Based on these reports as well as information collected in the ASA's Closed Claim Study, Preferred Physicians Mutual is advising anesthesiologists to discontinue the use of warmed IV bags to position patients. ❖

## ***Intraoperative Fires Lead To Allegations Against Anesthesiologists***

**A** number of cases of intraoperative fires have been reported involving allegations directed at anesthesiologists' care. Generally these cases relate to surgical procedures about the head or neck (e.g. cosmetic procedures, carotid endarterectomies), and where the surgeon is using a cautery device.

The anesthesiologists in such cases have been criticized for the method in which oxygen is delivered. In some cases the plaintiff's expert has criticized the anesthesiologist for allowing oxygen to pool in and around the surgical site. Other

plaintiff's experts have criticized the practice of blowing oxygen across the patient's face and the use of a nasal cannula. According to these experts, such techniques can increase the likelihood and severity of fires. In these cases the plaintiff's expert has indicated that it would be better practice to turn off the oxygen while the cautery is used or intubate the patient.

To avoid involvement in such cases, anesthesiologists are encouraged to consider measures that will minimize the contribution oxygen can make in intraoperative fires. ❖

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