Preferred Physicians Medical 10th 1987-1997 Anniversary

Anesthesia & the LAW

A Professional Liability Newsletter for Anesthesiologists — *Vol. 3, No. 2 – Aug 1997*

Eye Injury: Defense Verdict in Connecticut Peribulbar Block Case

Plaintiff, a seventy-two year old female, experienced vision loss following cataract surgery. Post-operatively, she was diagnosed with a vitreous hemorrhage requiring additional surgery. Plaintiff filed suit against both the ophthalmologist and the anesthesiologist claiming continued visual impairment.

Prior to trial, plaintiff's settlement demand was $230,000. With the consent of the policyholder, the ophthalmologist and anesthesiologist jointly offered $40,000, which was rejected.

Plaintiff's expert, Dr. Scott Soloway, an ophthalmologist in New Haven, Connecticut, testified that the injury to the plaintiff's eye resulted from a perforation during administration of peribulbar anesthesia. According to Dr. Soloway, such perforations are an unacceptable complication. Dr. Soloway also criticized the ophthalmologist for not recognizing the hemorrhage and proceeding with the cataract surgery.

Plaintiff attempted to bolster her case with the testimony of Dr. Neuwirth, a treating retinologist. Dr. Neuwirth testified that despite the fact his own medical records indicated an injury of unknown etiology, he believed the injury resulted from the peribulbar block. On cross-examination by defense counsel for the anesthesiologist, Dr. Neuwirth conceded his inability to locate an entry or exit site for the alleged perforation.

Dr. Marc Feldman, a board-certified anesthesiologist from Johns Hopkins, testified on behalf of the defendant anesthesiologist. According to Dr. Feldman, absent evidence of a perforation, the injury was, in his opinion, a surgical complication caused by tension placed on the eye during removal of the cataract. Dr. Musto, a local ophthalmologist, testified that even if the injury was caused by a peribulbar perforation, such injuries are a known complication and not below the standard of care.

The jury returned a defense verdict on behalf of both the ophthalmologist and the anesthesiologist.

Robert J. Cooney defended the case on behalf of Preferred Physicians Medical and its policyholder. ❖

Awareness: High on List of Anesthesia-related Injuries

Awareness ranks as the fifth most frequent anesthesia-related injury based on incidents and claims reported to Preferred Physicians Medical over a ten year period, 1987-1997. Recent medical literature suggests that the incidence of awareness is greater than originally suspected. *See, Anesthesiology Newsletter, Volume 58, Number 10, October 1994.*

TOP TEN ANESTHESIA INJURIES

1.	Death 854	6.	Burns 58
2.	Dental 484	7.	Eye Injury 57
3.	Nerve Damage 338	8.	Cardiac Arrest 56
4.	Brain Damage 212	9.	Infection 51
5.	Awareness 60	10.	Retained Instruments 43

Based on cases reported to Preferred Physicians Medical, the reasons for awareness could not be readily ascertained in a majority of cases. In those cases where a cause could be identified, awareness most typically resulted from 1) the selection and use of anesthetic agents, 2) a planned "light" anesthetic, or 3) a failure in the anesthesia delivery system.

In the majority of the cases, awareness occurred in spite of care that was consistent with the anesthesiologist's usual practice. Expected physiological changes, such as increases in blood pressure or heart rate, which may have alerted the anesthesiologist, were commonly absent. Such cases

suggest that certain patients may experience awareness despite care that would be appropriate for a more typical patient. This underscores the need to identify patients at increased risk for awareness.

Traditionally, identifying patients at increased risk has meant focusing on the types of cases where awareness is most likely. Awareness is frequently encountered in obstetrical cases, especially C-section delivery, and results from attempts to limit the potential of transferring anesthetic agents to the fetus. Likewise, cardiac procedures account for a significant number of claims. Some cases of cardiac awareness appeared to be the result of a planned "light" anesthetic, while others implicate a dilution of the anesthetic agent during bypass.

More recently, technological innovations point to the possibility of developing an EEG monitor that permits the anesthesiologist to monitor a patient's level of consciousness. *See, Anesthesia & Analgesia, pp. 891-899, 1997.*

In addition to preventing awareness, a review of reported claims underscores the importance of providing a proper response. Medical literature studying the effects of awareness indicates that long term problems associated with awareness can be avoided by prompt discussion or referral for psychiatric or psychological treatment.

In addition to avoiding residual injury, an appropriate response appears to be an important factor in decreasing the likelihood of litigation. In a significant number of claims reviewed, plaintiffs indicated their decision to file litigation was motivated, in part, out of frustration with health care providers who either minimized their complaints or suggested that the awareness did not occur.

Other areas of concern include the importance of properly monitoring and servicing the anesthesia equipment. One of the most significant cases of awareness involved allegations that the anesthesiologist failed to note a vaporizer was almost empty prior to starting the surgical procedure. The patient reported vivid recollections of the procedure, despite the fact no physiological changes in the patient's intra-operative condition were noted.

Preferred Physicians Medical has also observed an increased number of patients claiming awareness based on dissatisfaction with the level of comfort experienced with labor epidurals. This expanded definition of awareness appears to be related to recent media attention and attempts by plaintiffs to increase the significance of their claims.

While the majority of awareness cases handled by Preferred Physicians Medical are resolved with little or no monetary compensation, less than $25,000, more profound cases have involved settlements of $200,000 to $750,000.

Cases involving substantial settlements generally involve patients who claim a continuing disability, most typically a diagnosis of post traumatic stress disorder. To the extent such disorders interfere with a patient's ability to earn a living, the ability to project significant losses in a lawsuit is greatly increased.

Substantial settlements have also occurred in cases where the defense was hampered by poor anesthesia record keeping, in particular, a failure to precisely document the timing and dosage related to the administration of anesthetic agents. Other cases were adversely impacted by policyholders unable or unwilling to defend their care, low limits of insurance coverage or concern with personal exposure. ❖

Risk Management Analysis

Pre-operative discussions should be included in the informed consent process and should be specifically discussed with any patient at increased risk. Such discussions can both heighten the health care provider's attention to this issue and increase the probability of providing an appropriate response to an awareness complaint. During this discussion, patients should be encouraged to report any awareness so that any potential injury can be properly assessed and treated.

Recovery room personnel should be trained to alert the anesthesia department to any reports of awareness. Complaints of awareness should not be minimized, ignored or doubted. Any patient reporting awareness should be offered the opportunity to discuss the matter with an appropriate member of the anesthesia department. Patients expressing ongoing concerns may be referred for psychiatric or psychological consultation. Finally, any patient who has experienced awareness should be instructed to report this anesthetic complication when undergoing future surgical procedures.

Newsletter Editor
Steven R. Sanford, JD
Vice President, Claims
Preferred Physicians Medical

Medical Editor
Gerald F. Tuohy, MD
Chairman, Preferred Physicians Medical

Anesthesia & the Law *is published by Preferred Physicians Medical Risk Retention Group, Inc. at 7000 Squibb Road, Mission, KS 66202-3233 Telephone: 800-562-5589 Fax: 913-262-3633*