PREFERRED PHYSICIANS MEDICAL
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Anesthesia & the LAW

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Burns: A Significant Source of Anesthesia Malpractice Claims

Burns are the eighth most common injury reported by anesthesiologists to Preferred Physicians Medical. Over the last decade, policyholders have reported 58 adverse outcomes involving a burn-related injury.

Intra-operative fires

Intra-operative fire is the leading type of burn injury reported to Preferred Physicians Medical. Both the investigation and defense of intra-operative fires is focused on the three essential elements that create a fire: 1) the ignition source, 2) fuel, and 3) oxygen.

A typical intra-operative fire involves a surgical procedure of the head and neck. Most reported cases involve plastic surgery or ENT procedures. Other cases have arisen from carotid endarterectomies.

The ignition source is typically a surgical instrument, either electro-cautery or surgical laser. The fire is fueled by either the patient's own hair, surgical drapes, surgical dressings, or an alcohol based prep solution. While ambient air is a sufficient source of oxygen, many intra-operative fires are made more intense by the administration of oxygen.

The method of oxygen administration frequently forms the basis for a medical malpractice claim against the anesthesiologist. Plaintiff's medical experts typically criticize the anesthesiologist's failure to both anticipate and reduce the risk of an intra-operative fire. For instance, plaintiff's experts may criticize the use of oxygen in close proximity to the surgical field. If the anesthesiologist is simply blowing oxygen across the patient's face, the criticism may be the failure to use a nasal cannula. If a cannula was used, the criticism may be the failure to use a nasal catheter or to intubate.

Regardless of technique, plaintiff's experts will be prepared to testify that the risk of fire could have been minimized. These experts will often criticize the use of oxygen or the level in which it was administered. Poor communications with the surgeon is another typical criticism. These experts indicate that by discontinuing the oxygen during the use of the surgical device the risk of fire can be minimized. Also taking steps to dissipate any pooled oxygen prior to the use of electro-cautery or laser can minimize the danger or at least the intensity of any fire that does occur.

IN THIS ISSUE

- Several readers recently expressed surprise at the inclusion of burns on our list of frequent anesthesia malpractice injuries. In this issue we highlight this area of liability and discuss a recent jury trial that resulted in a $268,000 verdict. Intra-operative fires also recently received attention on the March 16, 1998, edition of the ABC news program 20/20.
- The dramatic increase in credentialing requests provides an opportunity to discuss this process and to offer some tips for avoiding credentialing problems.

We appreciate hearing from our readers and having an opportunity to respond to their questions.

Steve Sanford
Editor

Unlike many anesthetic misadventures, defending an intra-operative fire is difficult. Juries rarely accept this injury as a reasonable complication. As a result, most cases are resolved by settlements with contributions from all responsible parties, surgeon, anesthesiologist, and the hospital or its nurses. To the extent the involved health care providers cannot arrive at a reasonable settlement through an apportionment of fault, these cases are submitted to a jury. At trial, each party attempts to shift blame to another health care provider. The difficulty of such a defense posture is that the jury will ultimately attach liability to at least one of the parties. See trial summary on page 3. Moreover, finger pointing among health care providers usually increases the amount of any verdict taken. Unfortunately, such results may not be avoided if one or more of the responsible parties refuses to participate in settlement discussions.

Burns

Other burn injuries reported to Preferred Physicians Medical resulted from chemical sources or the misuse of equipment. Chemical burns are the most frequent source of injury, but usually are minor in nature. Such burns are largely defensible especially if they involve a patient with an idiosyncratic reaction to a common product, e.g. betadine.

More serious burn-related injuries have resulted from the misuse of warmed IV bags either to position or warm the patient. Other common, but less serious burns, have resulted from improperly grounded surgical equipment. The anesthesiologist is frequently included in such cases based on expert testimony of a shared responsibility to monitor and protect the patient from such injury.

Other significant burn injuries have been caused by the misuse of warming blankets. A recent Illinois case resulted in an $875,000 settlement after the warming blanket hose was improperly used without the warming blanket. In that case the nurse, with the approval of the anesthesiologist, placed the hose under regular blankets. This resulted in significant burns to the patient's feet. The diabetic patient ultimately required an amputation of one foot. ❖

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

Intra-operative Fire: Connecticut Jury Finds Against Anesthesiologist

Plaintiff, an 89 year old female, claimed scarring, pain and suffering as a result of an intra-operative fire.

Plaintiff's settlement demands prior to trial were rejected based on the surgeon's refusal to participate in the settlement.

Plaintiff's surgical expert testified that the surgeon and the anesthesiologist share responsibility for preventing operating room fires. He criticized the anesthesiologist's failure to communicate with the surgeon regarding the administration of oxygen and the failure to prevent oxygen from pooling near the surgical field. This expert also criticized the surgeon's use of the electro-cautery and his lack of communication with the anesthesiologist.

Defense experts were adversarial after the surgeon's expert testified that the fire resulted because the anesthesiologist allowed oxygen to pool near the surgical field. On examination by counsel for the anesthesiologist, the surgeon's expert conceded the surgeon was responsible for operating the electro-cautery in a safe manner.

An expert called on behalf of the anesthesiologist testified that the administration of oxygen conformed to the standard of care. In addition, this expert testified that the surgeon was responsible for draping the patient and for

operating the electro-cautery in a safe manner when in the presence of oxygen.

Despite strong testimony suggesting that the injury was at a minimum a shared responsibility and that the anesthesiologist met his requirement, the jury returned a plaintiff's verdict in the amount of $261,000. More disturbing was the fact that the jury's award was apportioned entirely to the anesthesiologist. Although PPM predicted an adverse verdict, both the amount and the apportionment were unexpected. Post trial motions have been filed and interviews with the jury have been ordered. ❖

Credentialing: Reporting Your Claims History

Policyholders have no doubt noticed an increase in the paperwork required to obtain hospital privileges or become credentialed to participate in health insurance company networks. With more and more institutions requiring physicians to submit their credentials, it is more important than ever to understand the process.

Today, credentialing generally includes an inquiry into a physician's medical training, practice, insurance coverage and claims history.

A physician is typically asked to complete an application, provide documentation and sign a release, which allows the credentialing organization to obtain independent verification of information provided by the physician in the application. Credentialing organizations (hospitals and health insurance companies) will usually contact the physician's malpractice insurance company to verify information regarding insurance coverage and claims history.

Preferred Physicians Medical recognizes the importance of credentialing and as a service to our policyholders has developed procedures for responding to such inquiries.

Over the last five years the number of credentialing requests processed by Preferred Physicians Medical has increased dramatically. In 1993, the Company processed only a handful of requests every month. Today, we process hundreds. In order to meet the increased demand, maintain an appropriate response time and provide the service free of charge, Preferred Physicians Medical has developed a standardized report format. Understanding this report is important to avoiding the pitfall of credentialing; inconsistent information.

What is reported

The credentialing report contains two parts. The first section provides basic information about the physician's policy: The policyholder's name, coverage dates, coverage type and limits.

The second section provides claims history. This includes information about each claim, notice of intent or lawsuit filed against the policyholder while insured with the company. Information reported includes the date of the incident, when it became a claim, a close date and information about how the file was resolved (if appropriate), any payment made on the policyholder's behalf, and a brief description of the nature of the allegation.

What isn't reported

The credentialing report does not include incident files. These are files established when a policyholder reports an adverse outcome, but before there is a demand for compensation, a threat of legal action, or interaction between Preferred Physicians Medical and the patient.

Incident files are established to invoke coverage and to provide the policyholder with legal or risk management advice. Incident files are also commonly established to record patient complaints that are being handled by the hospital or physicians directly without the involvement of the malpractice carrier. For example, many dental files are handled directly by our policyholders or their hospitals. Other matters not included on the credentialing report are requests for deposition testimony and inquiries by administrative agencies.

The Importance of Consistency

The credentialing process can grind to a complete halt when information provided by the policyholder on the application is not consistent with the information provided on the credentialing report. Leading causes of inconsistency are: a) inexact application questions that cannot be precisely answered by

the physician or the malpractice insurance company, and b) misinterpretation of the verification information by the credentialing organization. Today, most malpractice insurance companies provide standardized reports. These reports require the credentialing organization to carefully review and apply the information to their credentialing organizations. Credentialing organizations today must do more than a simple comparison of the number of items reported on the physician's application with the number of items reported on the credentialing report.

Interpretation leads to confusion

Confusion most commonly arises when credentialing organizations ask questions that are imprecise or use ambiguous terminology. Credentialing organizations should understand the terms: claim, notice of intent, and litigation.

Claim: A broad term for all matters reported to your insurance company that involves a demand for compensation. The broadest definition of this term includes litigation files as well as less formal situations where a patient is seeking compensation. A claim includes any matter that is turned over to the malpractice carrier to investigate and resolve.

This term is sometimes used to distinguish litigation from non-litigation claims, e.g., "Provide a list of claims and litigation."

Litigation: A term that refers to matters that are the subject of a lawsuit.

Notice of Intent: A statutory provision, which requires a plaintiff to notify you of his intent to file a lawsuit. In some jurisdictions (TX, OH) it is a letter that requires no formal response, in others (FL, MI, NV) it provides a process by which a case is investigated and perhaps resolved prior to the filing of a lawsuit.

IMPORTANT CREDENTIALING TIPS

- Answer application requests as broadly as required.
- Understand the terminology, and ask for clarification if the request is imprecise.
- Obtain a courtesy copy of your Credentialing Report for completing applications.
- Ask PPM for assistance whenever a problem arises.

How Preferred Physicians can help

First, Preferred Physicians Medical can provide the policyholder with a copy of his/her credentialing report. This is the same report sent to hospitals and health insurance organizations. By utilizing this report, the policyholder can be certain that the information provided on the application is identical to information Preferred Physicians Medical will provide to the credentialing organization. Contact our Policyholder Service Department to receive a copy of your credentialing report.

Second, in the event of an inconsistency ask the organization to review and compare its application request with the credentialing report for consistency of information. Place the credentialing organization in touch with the organization providing verification information, so together they can resolve the inconsistency.

Third, if you have a question about how to answer a request for information or are challenged about an apparent inconsistency, you may contact our Claims Department. One of our Claims Attorneys will help you unravel the misunderstanding. ❖

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