PPM ANESTHESIA MALPRACTICE INSURANCE

ANESTHESIA & the LAW

A RISK MANAGEMENT NEWSLETTER

PREFERRED PHYSICIANS MEDICAL RISK RETENTION GROUP, INC.

ISSUE 17

Pain Management: Texas Defense Verdict in Overdose Case

The patient, a twenty-six-year-old female with history of bilateral lower extremity pain and reflex sympathetic dystrophy in both feet, was being treated by a PPM anesthesiologist for pain management. The anesthesiologist discontinued the patient's prescription of MS Contin and ordered 30 mg of Methadone twice a day and additional 10 mg Methadone every four to six hours for breakthrough pain. The anesthesiologist's treatment consisted of prescription medications including Methadone, Flexeril and Neurontin. The patient reported she was getting adequate pain relief with the Methadone and the anesthesiologist documented she was in good spirits. Several weeks thereafter, the anesthesiologist received a call from the medical examiner's office and learned the patient had passed away.

The patient's parents sued the PPM anesthesiologist and his professional association, another pain management physician who had previously prescribed medications to the patient and a local pharmacy for wrongful death. The plaintiffs alleged the patient died as a result of the "toxic effects" of Methadone and Flexeril prescribed and provided by the defendants. An autopsy listed the cause of death as overdose of Methadone and Flexeril. The autopsy report also revealed the patient was taking Valium, although this medication had not been prescribed by any treating physician. In addition, the autopsy report indicated the presence of marijuana in the patient's system.

The plaintiffs dismissed the other co-defendant pain management physician and the pharmacy prior to trial. Plaintiffs' last demand to the PPM anesthesiologist before trial was $200,000 plus court costs. Based on the anesthesiologist's consent to settlement, PPM offered the $200,000 policy limits at mediation to settle this case. Plaintiff rejected the $200,000 settlement offer and we proceeded to trial.

Plaintiffs' anesthesiology expert witness, Anthony F. Kirkpatrick, MD, testified the PPM anesthesiologist failed to educate the patient about the synergistic effect of mixing Methadone with other medications (whether prescribed or not) and failed to warn the patient about the side effects of Methadone, including respiratory depression.

On cross examination by defense counsel, Dr. Kirkpatrick admitted the patient had the responsibility and duty to inform the anesthesiologist of her abuse of other illicit and non-prescribed drugs, to notify the anesthesiologist of any complications or side effects and not to abuse her prescriptions. Dr. Kirkpatrick also admitted it was not unusual for chronic pain patients to overmedicate, abuse other illicit and non-prescribed drugs and to be non-compliant with instructions and monitoring.

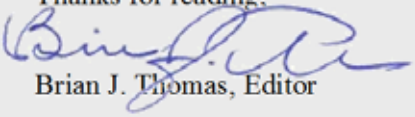
The trial lasted six days. The Tarrant County jury deliberated for two hours before returning an eleven to one defense verdict in favor of the PPM anesthesiologist. The jury also returned a finding of comparative negligence against the patient's mother for giving the patient Valium that was prescribed for the mother.

The court granted the defense motion for taxable costs and ordered the plaintiffs to pay $6,620.36. Plaintiffs

In this Issue

Pain management litigation has attracted increased attention within the insurance industry. Over the last year, PPM has embarked on a retrospective review of our own pain management litigation with the goal of refining and enhancing our underwriting approach, addressing concerns expressed by reinsurance companies and providing our policyholders with useful risk management advice. In this newsletter we highlight several recent pain management verdicts and offer some risk management analysis.

Thanks for reading.



Brian J. Thomas, Editor

offered to waive an appeal in exchange for PPM's waiver of the taxable costs. PPM rejected plaintiffs' post-verdict settlement offer and demanded payment of our taxable costs in full. Plaintiffs filed a notice of appeal but later dismissed the appeal and paid $6,620.36 to PPM.

G. Michael Stewart, Esq. of Dallas, Texas defended the PPM anesthesiologist at trial. Brian J. Thomas, Senior Claims Attorney, managed the claim file on behalf of PPM. ❖

Nerve Damage: Nevada Defense Verdict

A Las Vegas, Nevada jury returned a unanimous defense verdict in a nerve damage case following a cervical epidural steroid injection.

The patient, a seventy-three-year-old female, presented to a PPM anesthesiologist upon referral from the patient's treating neurologist for complaints of neck pain and right thigh numbness. The patient reported her pain began several years prior to her treatment with the anesthesiologist and she had not responded well to physical therapy or other non-steroidal medications. As such, the anesthesiologist felt she might benefit from a cervical translaminar epidural steroid injection under fluoroscopic guidance. The procedure was performed after the patient was provided with an informed consent discussion that mentioned the risks, benefits and options of the procedure.

The anesthesiologist's procedure note indicated that a #20 gauge Tuohy needle was placed in the epidural space with loss of resistance technique. While not documented in the procedure note, the anesthesiologist stated he entered at the C5-C6 level. Continuous fluoroscopic guidance was used while advancing the needle into the epidural space, with 1cc of Omnipaque dye injected confirming placement. Thereafter, 5 cc of Marcaine 0.25% MPF and 120 mg of DepoMedrol were injected into the epidural space. According to the anesthesiologist's procedure note, the patient was stable, ambulatory and neurologically intact following the procedure.

One day post-op, the patient was admitted to the emergency room complaining of problems with numbness on the left side and significant weakness involved in the left upper extremity. The patient was examined, referred to a neurologist and subsequently diagnosed with incomplete cervical myelopathic syndrome with mixed motor and sensory losses, as well as primary motor loss in the left arm to leg.

The patient sued the PPM anesthesiologist alleging the cervical translaminar epidural steroid injection was negligently administered causing a traumatic cervical syrinx. Prior to trial, plaintiff made a demand of $350,000. The PPM anesthesiologist declined to consent to settlement and we proceeded to trial.

Plaintiff's anesthesiology expert, Bennett Davis, MD, testified the PPM anesthesiologist fell below the standard of care by injecting directly at the C5-C6 level. Dr. Davis testified the standard of care required use of a catheter placed at the C6-C7 level, which should then have been threaded up to the level of pathology. Dr. Davis also claimed the fluoroscopic image taken by the anesthesiologist showed contrast material in the spinal cord rather than the epidural space. It was Dr. Davis' opinion that the injection of medication into the spinal cord led to a spinal cord injury.

The defense pain management expert testified the anesthesiologist's use of the needle to inject directly at the C5-C6 level was within the standard of care at the time the procedure was performed. The defense expert also testified the fluoroscopic image showed the contrast material in the epidural space. It was the defense expert's opinion that if there had been an injection into the spinal cord, one would expect the patient to go into cardio-pulmonary arrest and to need supportive measures for breathing for a significant period of time. None of that happened in this case.

The defense also called a board certified neurologist with a sub-specialty certification in pain management. This expert performed an independent medical exam on the plaintiff and explained that the plaintiff's current complaints were related to arthritis and pre-existing changes in her spine.

During closing argument, plaintiff's counsel alleged the anesthesiologist's practice was too busy leading to careless work. It was also alleged the procedure note was a template that contained no information specific for the procedure performed. Plaintiff's counsel asked for $2.4 million in past and future medical expenses and pain and suffering.

The defense argued in closing the standard of care was met and all reasonable risk-reducing precautions were taken by the PPM anesthesiologist. The defense also argued an injury resulting from the injection was a known risk the plaintiff had acknowledged when she consented for the procedure. Further, the complaints alleged to be related to the procedure were actually due to pre-existing cervical problems as well as arthritis and the normal process of aging.

The trial lasted seven days. The jury deliberated for approximately two hours before returning a defense verdict in favor of the PPM anesthesiologist. Post-verdict, the defense obtained a judgment for costs in the amount of $30,316.89.

S. Brent Vogel, Esq. of Las Vegas, Nevada defended the PPM anesthesiologist. Brian J. Thomas, Senior Claims Attorney, managed the claim file on behalf of PPM. ❖

Pain Management: Texas Defense Verdict Handed Down

The patient, a forty-five-year-old female with a history of a prior knee surgery, had been receiving pain management treatment for reflex sympathetic dystrophy from a PPM anesthesiologist for approximately two and a half years. The anesthesiologist's treatment consisted of a series of lumbar sympathetic blocks and an epidural catheter with continuous infusion. Prior to each procedure, the anesthesiologist discussed the risks and complications and a consent form was signed by the patient.

Four days after placement of the epidural catheter, the patient complained of pain and swelling in her lower back. She went to an emergency room where she was diagnosed with cellulitis and given an antibiotic. The anesthesiologist saw the patient the following day and noted some soft tissue signs and symptoms of infection. The PPM anesthesiologist admitted the patient to the hospital for treatment. MRI results indicated cellulitis and soft tissue inflammation/infection at the L3-4 level where the lumbar sympathetic blocks were performed.

The patient and her husband sued the PPM anesthesiologist and the hospital. Plaintiffs alleged the anesthesiologist did not provide informed consent and failed to protect the patient from exposure to staphylococcus aureus contamination. Plaintiffs alleged the hospital failed to provide a clean environment to reduce the risk of exposure to infectious diseases and failed to provide adequate supervision of professional and custodial staff to ensure the patient's room was a clean environment.

Prior to trial the hospital settled with the plaintiffs. The PPM anesthesiologist was resolved to defend his care so we proceeded to trial.

The trial lasted four days. The jury returned a unanimous defense verdict in twenty minutes. The jury did not believe the anesthesiologist performed the procedure in an un-sterile manner resulting in the patient acquiring an infection. The jury believed the patient was informed of the risk of infection which was acknowledged by the informed consent document. The court awarded the defense costs in the amount of $3,445.27.

Plaintiffs' expert witness was neurologist, Charles Marable, MD. Expert witnesses for the defense were an anesthesiologist and an infectious disease specialist.

G. Michael Stewart, Esq. of Dallas, Texas defended the PPM anesthesiologist at trial. Shelley Strome, Senior Claims Specialist, managed the claim file on behalf of PPM. ❖

Risk Management Analysis

Implementation of a detailed informed consent process continues to be one of the most effective risk management strategies for reducing the likelihood of claims or litigation for pain management practices. As illustrated by the cases reported in this issue, juries are less likely to conclude that an injury, including death and catastrophic nerve damage (paralysis), resulted from negligence when patients are made aware in advance that such injuries are known, albeit rare, complications. In addition, comprehensive narcotic contracts and detailed procedure notes can serve as persuasive evidence that the pain management specialist met the standard of care.

PREFERRED PHYSICIANS MEDICAL RISK RETENTION GROUP, INC.
9000 West 67th Street
Shawnee Mission, KS 66202-3656

T 913.262.2585 • 800.562.5589
F 913.262.3633

NEWSLETTER EDITOR
Brian J. Thomas, JD
Senior Claims Attorney

PPM ANESTHESIA MALPRACTICE INSURANCE

ANESTHESIA & the LAW

A RISK MANAGEMENT NEWSLETTER

PREFERRED PHYSICIANS MEDICAL RISK RETENTION GROUP, INC.

Look for PPM at the 2007 ASA Annual Meeting

San Francisco, California – October 13-17, 2007

Come by and relax at PPM's Booth (#2220) in the Exhibit Hall in the Moscone Center. We are always interested in visiting with our insured owners and receiving your feedback on how we are doing.

Visit PPMRRG.com

PPM's updated website provides PPM policyholders with up-to-the minute news, an events schedule and access to our risk management newsletter, *Anesthesia & the Law*. There is also a secure area on the website for the exclusive use of our policyholders. In this restricted area, policyholders will have access to an archive of *Anesthesia & the Law*, recommended forms and protocols, discussion papers referencing "hot topics" in anesthesia and other timely risk management materials.