PPM

ANESTHESIA & the LAW

A RISK MANAGEMENT NEWSLETTER

PREFERRED PHYSICIANS MEDICAL RISK RETENTION GROUP, INC.

ISSUE 21

PPM's Aggressive Strategy Leads To 38th Consecutive Defense Verdict In Upper Extremity Nerve Damage Litigation

A New York unanimous defense verdict is the latest in a string of 38 upper extremity nerve damage cases successfully tried by PPM. Since 1998, PPM has aggressively defended upper extremity nerve damage cases, primarily those involving injuries to the ulnar and brachial plexus nerves. After developing a comprehensive defense strategy, PPM has established an impressive trial record defending these cases; 38 defense verdicts, 0 plaintiff verdicts. An additional number of upper extremity nerve damage cases have been dismissed given PPM's successful trial record.

PPM's most recent case involved a 46 year-old male who presented for umbilical hernia repair under general anesthesia. According to the medical records, the patient made no complaints regarding his left arm during his hospital stay or when the surgeon called him the next day. However, the patient later testified that he made numerous complaints to both the nursing staff in PACU as well as to the surgeon. Plaintiff thereafter filed suit against the PPM insured anesthesiologist and the hospital claiming that improper padding and positioning during his surgery led to an ulnar nerve neuropathy.

Plaintiff's anesthesiology expert witness, David L. Trickey, MD, testified that since this was such a short surgical case the only explanation for the injury was that someone did something wrong. Dr. Trickey speculated further that the defendants allowed the plaintiff's arm to be stretched too much and/or allowed it to be injured by a hard object. Dr. Trickey also testified that the plaintiff had immediate onset of symptoms which proved something went wrong during surgery. However, the testimony of all treating nurses contradicted the plaintiff's and Dr. Trickey's testimony. The treating nurses' testimony was that the plaintiff never complained about his alleged injury during his entire hospital stay.

The anesthesiology defense expert testified the case was handled in accordance with the standard of care; that the arm board used was appropriate and the injury can occur despite best efforts to avoid it. The anesthesiology defense expert testified further that the injury did not appear to have occurred during this particular surgery.

An expert neurologist for the defense testified that the plaintiff did have an objectively demonstrable ulnar nerve neuropathy. However, the expert neurologist testified that the ulnar nerve neuropathy was not caused by the surgery in question. The expert neurologist testified that EMG and nerve conduction study findings performed three weeks post-operatively demonstrated the deficits were too far advanced to be related to the surgery.

Following a very short deliberation, the jury returned a unanimous defense verdict in favor of the PPM insured anesthesiologist and the hospital. Defense counsel was instructed to pursue all available defense costs against the plaintiff.

James Lantier, Esq. of Syracuse, New York defended the case on behalf of the PPM policyholder. Randy Obert, Claims Attorney, managed the file on behalf of PPM. ❖

Wrongful Death: Missouri Defense Verdict

A jury in the city of St. Louis, Missouri rejected plaintiffs' request for nearly $24 million and returned a defense verdict in favor of PPM's policyholders.

The lawsuit involved a 27 year-old female who presented for labor and delivery with her fifth child. The patient's medical history was remarkable for irregular heartbeat, asthma and low platelet count. She also admitted smoking during the pregnancy. Based on the anesthesia review of her chart and patient's low platelet count, an epidural

was contraindicated. The patient was advised that if a cesarean section was necessary, general anesthesia would be required. The anesthesiologist changed the order for blood from type and screen to type and cross and ordered the blood bank to stay two units ahead.

During delivery the obstetrician lacerated the uterine vessel resulting in significant blood loss. Testimony indicated there was some difficulty in obtaining blood from the hospital blood bank as the blood bank would only release one unit of blood at a time. The PPM insured anesthesiologist administered crystalloid and Hespan while waiting for blood. The obstetrician repaired the lacerated uterine vessel and the patient was transferred to the ICU in stable condition.

The patient's condition appeared to improve in the ICU until she suffered a sudden catastrophic event in which her blood pressure bottomed out and experienced cardiac arrest. Attempts to resuscitate the patient were unsuccessful and she expired.

The patient's husband filed suit against the hospital, the PPM insured anesthesiologist, CRNA and anesthesia practice group. The hospital settled prior to trial for an undisclosed amount. Plaintiffs focused their claim against anesthesia on the timeliness of blood and fluid replacement by the PPM insured anesthesiologist and CRNA.

Plaintiff's anesthesia expert, Kevin Miller, MD, testified that the patient succumbed to massive blood loss and hypovolemic shock after the laceration of her uterine vessel. Dr. Miller noted that the anesthesia chart contradicted the hospital nursing chart in several areas. Dr. Miller also criticized anesthesia for not ordering more blood from the blood bank. Interestingly, his opinion contradicted the recollection of other witnesses who testified that the reason for the blood shortage was the inability of the blood bank to release more blood despite repeated requests by anesthesia. Dr. Miller testified that the charting of the fluid replacement by the anesthesia team was deficient, particularly the use of "short hand" notes for subsequent doses of lactated ringers. Dr. Miller attacked the charting as sloppy and insinuated that it smacked of falsification of records.

The expert witnesses for the defense refuted Dr. Miller's version of events. According to the defense experts' testimony, the sudden drop in the patient's blood pressure in the ICU could not be attributed to a lacerated uterine vessel. The defense argued that the uterine vessel was appropriately repaired and sufficient fluids (including blood) were administered, and yet the patient still experienced a sudden and dramatic decrease in blood pressure and cardiac arrest. The defense experts testified that the constellation of clinical signs and symptoms suggested the patient most likely died due to an amniotic fluid embolism.

In closing arguments, the plaintiffs' attorney asked the jury return a $23.9 million dollar verdict. After two hours of deliberation, the jury instead returned a defense verdict in favor of all PPM policyholders.

PPM's policyholders were represented by Greg Minana, Esq. of St. Louis, Missouri, and the file was managed on behalf of PPM by Brian Thomas, Senior Claims Attorney. ❖

Compartment Syndrome: Texas Defense Verdict

A Texas jury returned a unanimous 12-0 defense verdict in a lawsuit involving a plaintiff with compartment syndrome and amputation following shoulder surgery.

The patient, a 61 year-old female, scheduled for a left shoulder arthroscopy and rotator cuff repair, received an interscalene block from the PPM insured anesthesiologist. During the administration of the block, the anesthetic agents apparently entered the patient's bloodstream. The patient experienced convulsions and ventricular arrhythmias, but was successfully stabilized. However, during the resuscitation an I.V. extravasated in the patient's arm leading to compartment syndrome which eventually required amputation of the patient's hand.

The plaintiff sued the PPM insured anesthesiologist as well as the hospital. Plaintiff claimed the PPM insured anesthesiologist breached the standard of care by failing to select a safer anesthetic agent other than Bupivacaine for the interscalene block. Plaintiff claimed that using a different anesthetic agent would have reduced the side effects of the intravascular injection and the subsequent extravasation of the I.V. could have been avoided.

Prior to trial the plaintiff made a settlement demand of $850,000. In consultation with the PPM insured anesthesiologist, PPM rejected plaintiff's settlement demand and the case was prepared for trial. The hospital settled with the plaintiff during the trial.

Plaintiff's expert, Dr. Tracy Strandhagen, testified the standard of care required that Epinephrine be added to the injection to provide early notice of intravascular injections. Dr. Strandhagen also testified that Ropivacaine, not Bupivacaine, should be used for interscalene blocks.

PPM's defense expert testified that the addition of Epinephrine to the injection of Bupivicane was not the standard of care. The defense expert also testified that both Bupivacaine and Ropivacaine can cause cardiovascular collapse if not handled properly. Additionally, the defense expert stressed that complications from the anesthetic are a known risk of the procedure and can occur under the best of circumstances.

The jury deliberated for only one hour before returning a unanimous defense verdict. Thereafter, PPM recovered all available defense costs from the plaintiff.

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

Wrongful Death: Arizona Defense Verdict

After only 15 minutes of deliberation, an Arizona jury returned a defense verdict in favor of a PPM insured anesthesiologist.

The case involved a 44 year-old male who presented with a closed head injury, tear in descending aorta, multiple rib fractures, pulmonary contusions, pelvic fracture and open tibia/fibula fracture after a motor vehicle accident. The patient underwent an emergent left thoracotomy with resection and graft repair of the descending thoracic aorta and closed reduction of the tibial fracture. Thereafter the patient had a rocky course and three days post-op the PPM insured anesthesiologist was paged emergently to intubate the patient per request by the attending pulmonologist. The patient became combative during intubation attempts; therefore, the PPM anesthesiologist administered 80mg of Propofol. Within 5 minutes of intubation, the patient experienced bradycardia and arrested. The patient was resuscitated but sustained an anoxic brain injury. The patient's wife discontinued life support measures and the patient expired.

The patient's family sued the PPM insured anesthesiologist. Prior to trial, plaintiffs demanded $1.75 million to settle the case. PPM, in consultation with the PPM insured anesthesiologist, rejected plaintiffs' settlement demand and the case proceeded to trial.

Plaintiffs' expert witness, Dr. Edson Parker, argued the PPM insured anesthesiologist fell below the standard of care by not properly intubating the patient. Dr. Parker also testified that the administration of Propofol contributed to the patient's cardiopulmonary arrest and subsequent death.

The defense expert witness pointed out that Propofol was the most effective and safest anesthetic agent under the circumstances. In addition, the patient had previously received Propofol in an earlier surgical procedure without complication. The defense expert testified this particular patient was very difficult to intubate and the choice to administer Propofol to facilitate intubation was not contraindicated and the PPM insured anesthesiologist's care and treatment did not fall below the standard of care.

After only 15 minutes of deliberation, the jury returned a defense verdict in favor of the PPM insured anesthesiologist.

Gary Fadell, Esq. of Phoenix, Arizona defended the case on behalf of the PPM insured anesthesiologist. Brian Thomas, Senior Claims Attorney and Shelley Strome, Senior Claims Specialist managed the file on behalf of PPM. ❖

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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 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. PPM policyholders should visit the MyPPMrrg area of the website to obtain their personal password.

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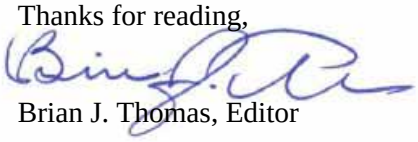
In This Issue

We highlight some of our recent successes in the courtroom, including PPM's 38th consecutive defense verdict in upper extremity nerve damage cases. PPM continues to aggressively pursue cost judgments awarded against plaintiffs following defense verdicts. To date, PPM has secured over $1.2 million in judgments against plaintiffs who have sued PPM policyholders.

Thanks for reading,



Brian J. Thomas, Editor