



Wrongful Death: New Jersey Defense Verdict

A Camden, New Jersey jury returned a defense verdict in favor of a PPM policyholder in a wrongful death case following brain surgery. There were no settlement negotiations prior to trial based on the strength of our defense and the PPM policyholder's commitment to defend her care. Prior to trial, settlement value was estimated by defense counsel at approximately \$750,000.

This lawsuit involved a 32 year-old female with a history of pituitary adenoma, hypothyroidism, gastritis, anemia and bi-polar disorder. The patient had been diagnosed with a subdural hematoma consistent with pituitary adenoma and underwent a pituitary gland removal craniotomy under general anesthesia. Three attempts were made to intubate the patient; however, no trauma was noted.

The procedure was completed and the patient was taken to the PACU intubated. Before extubation and while verifying the patient met extubation criteria, the anesthesiologist asked the patient to squeeze the anesthesiologist's hand in response to certain questions. When asked about her vision, the patient indicated she could not see. The neurosurgeon was called to examine the patient and determine whether or not the unexpected post-surgical vision loss was a contraindication to extubation.

The neurosurgeon cleared the patient surgically and informed the anesthesiologist. The anesthesiologist again established that the patient met all extubation criteria and proceeded with extubation. Within approximately five minutes of extubation, the patient's oxygen saturation and heart rate declined. Her oral cavity was examined and blood was noted and suctioned. A laryngospasm was suspected and treated but her symptoms did not improve. The patient was bagged and although she was receiving oxygen her saturation levels never improved. A code was called and the patient was subsequently re-intubated, but she could not be revived and was eventually pronounced dead. The autopsy report listed the cause of death as mild atherosclerotic heart disease and fatty liver. No trauma to the vocal cords, larynx, or pharynx was noted on autopsy.

The patient's mother filed a lawsuit against the PPM insured anesthesiologist and hospital. Plaintiff alleged the decedent did not meet extubation criteria and was prematurely extubated. Plaintiff also alleged the decedent had some type of respiratory event caused by trauma from the multiple intubation attempts, fentanyl toxicity and/or failure to suction the patient prior to extubation that led to cardiac arrest and the ultimate death of the patient.

Plaintiff's anesthesiology expert, Mitchel Sosis, M.D., opined that the PPM insured anesthesiologist caused trauma or edema to the decedent's airway due to inept handling of the intubation as evidenced by three attempts to accomplish the tracheal intubation. He also opined that the decedent was given excessive amounts of fentanyl that contributed to the decedent's respiratory depression. Dr. Sosis testified that the PPM insured anesthesiologist failed to evaluate the decedent's airway reflexes, failed to evaluate the negative pressure and failed to recognize there was blood in the airway.

The defense anesthesiology expert carefully refuted Dr. Sosis' version of events. The defense anesthesiology expert testified that the intubation attempts were documented as atraumatic, extubation criteria was fully met and the respiratory effects of the fentanyl would have dissipated within a few minutes of being administered. He also opined that the patient did not appear to have a respiratory event and it was his expert opinion that the patient suffered a cardiac event. According to the defense anesthesiology expert, the patient appeared to be adequately oxygenated, but due to her cardiac condition her heart was not pumping so her oxygen saturation readings remained low.

After approximately two hours of deliberation, the jury returned a defense verdict in favor of the PPM insured anesthesiologist. PPM's insured anesthesiologist had never consented to settlement so there were no settlement discussions.

PPM's policyholder was represented by Jay Blumberg from the law firm of Blumberg & Linder, LLC, Woodbury, New Jersey. The file was managed on behalf of PPM by Wade Willard, Claims Supervisor. ❖

Brain Damage: Iowa PPM Policyholders Dismissed During Trial

This lawsuit involved a 30 year-old female, gravida III, para II, who was admitted for elective induction and delivery. The PPM insured anesthesiologist administered a combined spinal epidural (CSE) as requested by the patient for labor pain. Following the administration of the CSE, it was noted that the fetal heart tones (FHTs) sounded low. Thereafter, the patient experienced some hypotension that was treated with several doses of ephedrine. The patient was not reliably responding to directions and had what appeared to be a vaso-vagal episode with some clonic-like movements. Nurses promptly applied oxygen by face mask. The patient's position was changed in order to try and improve the baby's heart rate. The PPM insured anesthesiologist gave another dose of ephedrine after which the patient became more alert and was able to follow directions. The nurses continued to change the patient's position; checked her cervix to see if it was completely dilated; gave tactile stimulation to the baby's scalp and placed a fetal scalp electrode. The fetal scalp electrode confirmed that the fetal heart rate was in the 60's. Because the fetal bradycardia had not improved when the maternal blood pressure improved, the PPM insured anesthesiologist concluded there was a cord, placental or uterine problem. An emergency cesarean was ordered and the patient was taken to the OR. The patient's blood pressure (BP) was 141/109, but the FHTs remained in the 60's. When the surgeon was ready, the PPM insured anesthesiologist induced the plaintiff in a rapid sequence manner and a healthy baby was delivered. The patient awoke and was alert and neurologically intact in the care of an OB nurse when the PPM insured anesthesiologist left the OR.

Thereafter, a nurse noted drainage from the abdominal dressing and requested that the surgeon return to assess the patient. The surgeon removed the abdominal dressing which was saturated with blood. Repeated attempts to obtain a BP were unsuccessful and the patient was unable to follow commands. A code blue was called and the patient was returned to the OR and a hysterectomy was performed to control the bleeding. The patient allegedly suffered hypoxic brain injury as a result of these events.

Plaintiff filed suit against the surgeon, the hospital, her family physician, the PPM insured anesthesiologist and the anesthesia practice group. The co-defendant surgeon, hospital and family physician settled with the plaintiff prior to trial for a total of \$800,000. In consultation with defense counsel and PPM, the PPM insured anesthesiologist refused to consent to settlement and we proceeded to trial.

During opening statements, plaintiff's counsel told the jury plaintiff's damages were in excess of \$3,500,000. On the fourth day of trial, the defense called its first expert witness, who was board certified in anesthesiology and obstetrics/gynecology. The defense expert testified that the PPM insured anesthesiologist complied with the standard of care in all respects, that the plaintiff suffered no injury during his treatment and that the cause of the plaintiff's injury was an unpredictable and unpreventable amniotic fluid embolism (AFE). Plaintiff then called her expert, Russell Jelsema, M.D., a specialist in OB/ GYN and maternal/fetal medicine. Neither his pretrial written report nor his deposition indicated he would offer opinions regarding anesthesiology standard of care or that such care caused injury to the plaintiff. Objections by defense counsel to repeated questions touching on those issues were sustained. Dr. Jelsema testified that simple postpartum hemorrhage occurred, rather than an AFE, but conceded that all but one of the criteria for a diagnosis of AFE were present. On cross-examination he testified that the surgeon fell below the standard of care from delay in treating the bleeding, delay in calling an anesthesiologist and delay in calling for blood products—all of which were a proximate cause of plaintiff's injury.

On the following day, without having called her previously designated anesthesiology expert, plaintiff voluntarily dismissed the case with no payment by PPM. "The PPM policyholder's resolve to defend his care through trial played a significant role in convincing the plaintiff to voluntarily dismiss her case in the middle of trial," according to Brian Thomas, Senior Claims Attorney.

PPM's insured anesthesiologist was represented by Robert Rouwenhorst, Esq. from the law firm Rouwenhorst & Rouwenhorst, PC, Des Moines, Iowa. The file was managed on behalf of PPM by Brian Thomas, Senior Claims Attorney. ❖

Wrongful Death: PPM Policyholder Dismissed During Missouri Trial

A PPM insured anesthesiologist was dismissed during a recent Missouri wrongful death jury trial as a result of an aggressive defense posture and a thorough understanding of the anesthesia issues presented. There were no settlement negotiations based on the PPM insured anesthesiologist's commitment to defend his care and the strength of our defense. Plaintiffs made a global settlement demand in the amount of \$350,000 prior to trial.

This lawsuit involved a 56 year-old male with a history of morbid obesity, sleep apnea, diabetes, end-stage renal disease and hypertension who underwent incision and drainage of his right ankle under general anesthesia. A pre-operative EKG showed a right bundle branch block; however, the patient denied any cardiac symptoms. The procedure was performed by a podiatrist. Since the podiatrist did not have admitting privileges, the patient's nephrologist was asked to be the admitting physician. One PPM insured anesthesiologist started the case and was relieved by a PPM insured CRNA who was supervised by another PPM insured anesthesiologist. The procedure was completed with no apparent problems and the patient was taken to the floor. The podiatrist made a note that the admitting physician be called when the patient was taken to the floor. The admitting physician was never notified that the procedure was completed or that the patient was taken to the floor.

The patient did well for several hours, but was subsequently found unresponsive with his CPAP off to the side of his face. A code was called but they were unable to resuscitate the patient. The autopsy report listed the cause of death as atherosclerotic coronary artery disease.

The patient's four adult children filed suit against the admitting physician, the first PPM insured anesthesiologist and the hospital. Plaintiffs alleged the PPM insured anesthesiologist and the admitting physician failed to order beta blockers and post-operative monitoring. Allegations against the hospital were failure to appropriately monitor and failure to follow physician's orders.

Plaintiffs did not have an anesthesiology expert witness but instead used a surgeon and a critical care physician as their experts. Plaintiffs' surgery expert, Dr. William Helton, opined that the PPM insured anesthesiologist deviated from the standard of care by failing to order beta blockers. Plaintiffs' critical care expert, Dr. Gary Salzman, testified at trial that the PPM insured anesthesiologist and the admitting physician fell below the standard of care by failing to order beta blockers and by failing to order post-operative monitoring. Dr. Salzman argued that if both of these things had been done the patient would be alive today. Counsel for the PPM insured anesthesiologist examined Dr. Salzman extensively on the current medical literature that argues against beta blockers in this type of case due the patient's right bundle branch block and renal insufficiency.

Following the testimony of the PPM insured anesthesiologist and CRNA and prior to the testimony of the defense expert witness, plaintiffs dismissed their case against the PPM insured anesthesiologist. The case proceeded against the hospital and the admitting physician and those defendants ultimately received a defense verdict.

Greg Minana, Esq. from the law firm of Husch Blackwell in St. Louis, MO represented the PPM insured anesthesiologist. The file was managed on behalf of PPM by Shelley Strome, Senior Claims Specialist. ❖

Dental Injury: Rare Dental New Jersey Trial Results in Defense Verdict

“Litigation involving dental injuries is extremely rare. Experienced plaintiff attorneys typically don't accept cases with little economic damages given the considerable costs associated with preparing medical malpractice cases for trial, especially the cost of retaining expert witnesses,” according to Shelley Strome, PPM's Senior Claims Specialist. “In addition, an overwhelming number of dental cases are defensible on the medicine as the risk of dental injury is a known risk that is typically disclosed to the patient during the informed consent process,” added Strome.

This lawsuit involved a 61 year-old male with a history of colon cancer who underwent a wide excision of a sinus tract of the anterior abdominal wall. During the pre-anesthesia assessment it was noted that the patient had upper and lower caps. The risks of general endotracheal anesthesia were discussed and the patient signed a consent form that included among the risks, injury to mouth and teeth. The patient was intubated with no complications and the procedure was successfully completed. The patient was discharged home the same day with no complaints.

Post-discharge, the patient claimed that while he was in PACU he felt a sensation similar to one of his caps having been broken off. He further alleged during the car ride home he confirmed a cap had been broken off by feeling the tooth with his tongue. When he arrived home he said he grabbed the tooth and removed it easily with no pain or blood.

The patient sued the PPM insured anesthesiologist and CRNA. Prior to trial the plaintiff made several demands starting at \$10,000. With PPM's policyholders' consent and in a gesture of goodwill, PPM offered the cost of the dental repair in the amount of \$2,225. Plaintiff rejected this offer and we proceeded to trial.

Plaintiff's settlement demand on the first day of trial was \$25,000. Plaintiff did not retain an expert witness to testify in the case as New Jersey recognizes a common knowledge doctrine to relieve a plaintiff from the necessity of retaining an expert witness and providing expert testimony. The common knowledge doctrine applies where the court believes that the injury is one that the jury can assess without the benefit of expert opinion. The defense anesthesiology expert testified that the intubation was performed appropriately and without evidence of any dental injury while under the care of the anesthesia personnel. The defense expert also testified that dental injury is a known risk and complication of general endotracheal anesthesia.

Following a three day trial, the jury returned a unanimous defense verdict in favor of PPM's policyholders after less than one hour of deliberation.

PPM's policyholders were represented by George H. Cortelyou from the law firm of Buckley & Theroux, LLC, Princeton, New Jersey. The file was managed on behalf of PPM by Shelley Strome, Senior Claims Specialist. ❖

Nerve Injury: New York Jury Returns Defense Verdict

A Saratoga County, New York jury recently returned a defense verdict in favor of a PPM insured anesthesiologist and his anesthesia practice group. At the PPM policyholder's request and based upon defense counsel's advice, PPM capped the PPM policyholder's liability within the available policy limits by entering into a high/low agreement during trial.

A 47 year-old female presented for right shoulder arthroscopy. Prior to the procedure and after obtaining informed consent, the PPM insured anesthesiologist attempted to place an interscalene brachial plexus block. The block included a total of 3 ml of injected mepivacaine and bupivacaine with a nerve stimulator needle at the C6 level. After receiving the appropriate response with the nerve stimulator and 1 cc test dose, the nurse was told to aspirate again and inject the local anesthetic. At this point the patient complained of shortness of breath. The block was discontinued. The patient was oxygenated and ultimately intubated. She remained on the ventilator for approximately four hours. At the time of extubation she complained of numbness in her right arm and hand. A neurology consult was ordered and a MRI was performed. The MRI showed a syrinx, which the radiologist did not think was related to the procedure. The patient was ultimately diagnosed with a brachial plexus injury and permanent injury to her right arm and hand.

The patient filed a lawsuit against the PPM insured anesthesiologist, the anesthesia practice group and the hospital. Plaintiff alleged she was not provided with adequate informed consent and that her spinal cord was pierced by the needle during administration of the interscalene block resulting in a permanent brachial plexus injury.

Plaintiff's anesthesiology expert, Steven Schrenzel, M.D., testified that although the procedure note indicated the block was performed appropriately, it was his opinion that is not what transpired and the PPM insured anesthesiologist entered the spinal cord with the needle. Dr. Schrenzel testified further that the needle entering the spinal cord caused the syrinx, which led to the permanent brachial plexus injury. Dr. Schrenzel also testified that based on plaintiff's testimony she was not given adequate informed consent regarding the risks, benefits and alternatives.

The defense anesthesiology expert testified that the interscalene block was performed appropriately and nerve injury was a known risk of the procedure. The defense anesthesiology expert also testified that the patient was given adequate informed consent including the risks, benefits and alternatives.

Plaintiff's last settlement demand prior to trial was \$1.9 million. The PPM insured anesthesiologist consented to settlement and requested that the case be settled based on the plaintiffs' high economic damages claim. With the PPM insured anesthesiologist's consent, PPM offered \$425,000 prior to trial. Plaintiff rejected PPM's settlement offer and the case proceeded to trial.

During trial, defense counsel recommended entering into a high/low agreement to protect against the possibility of a significant adverse verdict. The high/low agreement capped the verdict at the insured anesthesiologist's available insurance policy limits and also guaranteed payment to plaintiff even if the jury returned a defense verdict.

The hospital was dismissed from the lawsuit mid-way through trial. In closing arguments, Plaintiff's counsel asked the jury to return a verdict for \$3.95 million. Following a two-week jury trial, the jury returned a defense verdict finding no negligence against the PPM insured anesthesiologist or the anesthesia practice group. As a

result of the defense verdict, PPM paid plaintiff the confidential low amount of the high/low agreement that was reached during trial.

The PPM policyholders were represented by Mae D'Agostino, Esq. of the law firm D'Agostino, Krackeler, Baynes & Maguire, PC, Menands, New York. The file was managed on behalf of PPM by Shelley Strome, Senior Claims Specialist. ❖

Wrongful Death: New York Defense Verdict

A Suffolk County, New York jury returned a defense verdict in favor of a PPM policyholder after eight years of litigation. Wade Willard, Claims Supervisor, explained that “due to New York’s rules of civil procedure and their courts’ willingness to allow plaintiffs to prolong the litigation process, it is not uncommon for New York medical negligence cases to take an average of five to seven years to reach trial. In number of cases, our defense of New York policyholders has spanned an entire decade.” added Willard.

The lawsuit involved a 75 year-old male patient who presented for colon polyp removal. The patient’s medical history included hypertension, diabetes and pharyngeal cancer. During induction of anesthesia, 2 mg of Versed and a titrated dose of 150 mcg fentanyl were administered. Immediately following the administration of fentanyl, the patient became bradycardic; oxygen saturations dropped; and he experienced ventricular tachycardia and asystole. Resuscitation efforts were immediately instituted and within approximately five minutes the patient was resuscitated and stabilized. Thereafter the patient was transferred to the cardiac catheterization lab and then to the floor. The patient later developed intracranial bleeding that required surgical intervention.

The patient sued the PPM insured anesthesiologist and the hospital two years after this incident. However, the patient died shortly thereafter from metastatic gastric cancer. An estate representative was appointed and the litigation continued. Plaintiff alleged the patient suffered respiratory arrest caused by “excessive anesthesia” and a failure to adequately ventilate the patient. The primary allegations against the hospital were failure to diagnose and treat the patient’s intracranial hemorrhage. Plaintiff alleged both events contributed to the patient’s death.

Plaintiff’s counsel made a global settlement demand for \$2,225,000 prior to trial. The PPM policyholder was committed to defending his care and did not consent to settlement. As a result, PPM made no settlement offers prior to trial. The hospital also did not make any settlement offers prior to trial. Eight years and two months after the incident in question this matter came to trial.

Plaintiff’s anesthesiology expert was critical of the pre-operative examination alleging it was inadequate given the patient’s medical history. The plaintiff’s anesthesiology expert also testified the patient’s complication was the result of a reaction to fentanyl and lack of proper ventilation.

Defense counsel for the PPM policyholder extensively researched plaintiff’s anesthesiology expert’s prior testimony in other lawsuits, including prior opinions that epinephrine will not have an affect on a patient experiencing arrest due to lack of ventilation. During cross examination defense counsel asked plaintiff’s anesthesiology expert why the patient’s vital signs responded to administration of epinephrine. Plaintiff’s anesthesiology expert testified he “assumed” the anesthesiologist had changed the method of air delivery. Plaintiff’s anesthesiology expert’s assumption was not supported by the medical records or the PPM policyholder’s testimony.

The defense anesthesiology expert testified the care and treatment provided by the PPM policyholder was appropriate and timely in responding to the patient’s complications. The defense anesthesiology expert testified further the patient experienced cardiac arrest, not respiratory arrest. The defense anesthesiology expert also testified intubation and ventilation were appropriate and resuscitation was successful.

The jury deliberated for one day prior to returning a defense verdict for the PPM policyholder. The hospital settled for \$400,000 during jury deliberations. Post-trial discussions with the jurors revealed the question of anesthesia negligence had been dealt with during the initial thirty to forty minutes of deliberations. The jurors indicated the rest of the time had been spent on the allegations against the hospital. Notably, a defense verdict would have been returned in favor of the hospital had the hospital not settled during jury deliberations.

PPM’s policyholder was represented by Bruce Brady from the law firm of Callan, Koster, Brady & Brennan, LLP, in New York, New York. The file was managed on behalf of PPM by Wade Willard, Claims Supervisor. ❖

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In This Issue

We highlight some of our recent successes in the courtroom. As illustrated by several of the cases reported in this issue, the PPM policyholder's resolve and commitment to defend his or her care is a significant factor in successfully defending medical negligence lawsuits. Plaintiffs faced with a PPM policyholder committed to defending his or her care through trial and the possibility of owing PPM a significant cost judgment in the event of a defense verdict have dismissed cases after years of litigation. PPM continues to aggressively pursue cost judgments awarded against plaintiffs following defense verdicts. To date, PPM has secured nearly \$1.2 million in judgments against plaintiffs who have sued PPM policyholders.

Thanks for reading,

Brian J. Thomas, Editor

Note: The purpose of this newsletter is to provide information to policyholders and defense counsel regarding professional liability issues. Risk management analysis is offered for general guidance and is not intended to establish a standard of care or to provide legal advice.

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