PPM ANESTHESIA & the LAW
A RISK MANAGEMENT NEWSLETTER

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ISSUE 31

New ASA Standard for Basic Anesthesia Monitoring Effective July 1, 2011

For the first time since 2005*, the American Society of Anesthesiologists (ASA) House of Delegates approved a change in the ASA Standards for Basic Anesthetic Monitoring. Effective July 1, 2011, the ASA Standards for Basic Anesthetic Monitoring were revised. In response to the new ASA Standard for Basic Anesthetic Monitoring, PPM is modifying those policy provisions that make PPM's malpractice coverage contingent on compliance with ASA monitoring standards. By extending additional time before requiring policyholder compliance with the new standards, PPM policyholders will have sufficient time to review and adjust their practices to meet the new requirements.

ASA's former Standard for Basic Anesthesia Monitoring read:

> During regional anesthesia and monitored anesthesia care, the adequacy of ventilation shall be evaluated by continual observation of qualitative clinical signs and/or monitoring for the presence of exhaled carbon dioxide.

Effective July 1, 2011, ASA's new Standard for Basic Anesthesia Monitoring reads:

> During regional anesthesia (with no sedation) or local anesthesia (with no sedation), the adequacy of ventilation shall be evaluated by continual observation of qualitative clinical signs. During moderate or deep sedation, the adequacy of ventilation shall be evaluated by continual observation of qualitative clinical signs and monitoring for the presence of exhaled carbon dioxide unless precluded or invalidated by the nature of the patient, procedure or equipment. ❖

Coverage Alert: PPM Compliance Period Extended

In response to the change in ASA Standard for Basic Anesthesia Monitoring that became effective July 1, 2011, PPM has informed its policyholders that the policy provision requiring compliance with the ASA's new monitoring standards will be waived with respect to the new requirement **until January 1, 2012**. Policyholder coverage continues to require compliance with the Standard for Basic Anesthesia Monitoring in effect prior to July 1, 2011.

PPM's professional liability contract specifies (page 4, item 5-6) that the policyholder specifically agrees "[t]o practice in accordance with all current ASA Standards for Basic Anesthetic Monitoring."

Because the ASA announced the change in the ASA Standards for Basic Anesthetic Monitoring in the March, 2011 issue of the ASA Newsletter, PPM's management was concerned that not all practice locations would be in compliance with the new standard by the July 1st deadline. Various questions from PPM policyholders reinforced this concern and suggested that additional time was required to address questions and concerns. According to Brian Thomas, PPM's Director of Risk Management, "the company has begun to address many questions that have been raised by our policyholders. We have also received positive feedback on our decision to extend additional time prior to requiring compliance as a condition of coverage."

Mr. Thomas went on to note the inclusion of ASA Standards into its policyholder contract recognized the importance these standards play in improved patient safety. Nevertheless, according to the ASA, these standards "are designed to provide guidance to improve decision-making and promote beneficial outcomes for the practice of anesthesiology.

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* Our original article incorrectly suggested the ASA's Monitoring Standard had not been changed for over a decade. Dr. Robert Stoelting, President of the Anesthesia Patient Safety Foundation, notes this same Standard was amended in October 2005 to include audible physiologic alarms.

They are not intended as unique or exclusive indicators of appropriate care. The interpretation and application of Standards, Guidelines, Practice Advisories and Statements take place within the context of local institutions, organizations and practice conditions. A departure from one or more recommendations may be appropriate if the facts and circumstances demonstrate that the rendered care met the physician's duty to the patient."

On the other hand, PPM's considerable litigation experience strongly suggests plaintiff attorneys may successfully argue that the ASA Standards do indeed create a national standard of care for all anesthesiologists. As a result, PPM continues to believe that compliance with the newly revised standard will improve our ability to defend anesthesiologists in the courtroom.

For additional information on the ASA Standards, PPM recommends reviewing information available at the ASA website at www.asahq.org.

Frequently Asked Questions

Since first publishing its Coverage Alert with respect to the new ASA Standard for Basic Anesthesia Monitoring, PPM has received questions from its policyholders regarding complying with the new ASA Standard. PPM, in consultation with its Medical Director, a board certified anesthesiologist, and the company's physician Board members, has provided policyholders with some initial guidance based on PPM's role as a medical professional liability insurance company. In offering this guidance, PPM does not intend to direct medical care or establish a standard of care for complying with the new ASA Standard for Basic Anesthesia Monitoring. The following frequently asked questions and answers are provided as general risk management advice:

Q We are concerned about these new monitoring requirements. Are there any exceptions or an appeal process that we can utilize to address these concerns with end-tidal carbon dioxide (ETCO2) monitoring?

A The change in the ASA standards was adopted in October 2010 by the ASA's House of Delegates, not PPM. Other than seeking clarification through the ASA, we are not aware of any other avenues to address concerns with the new standard.

Q Has PPM delayed the implementation of the new ASA Standard for Basic Anesthesia Monitoring until January 1, 2012?

A No. PPM has only delayed the enforcement of PPM's policy provision requiring its policyholders to practice in accordance with all current ASA Standards for Basic Anesthesia Monitoring until January 1, 2012. The new ASA Standard is effective as of July 1, 2011.

Q I administer local anesthesia with moderate sedation for a lot of cases involving surgery on the nose and other facial features that make it impossible to use ETCO2 monitors. How do I comply with the new ASA Standard?

A Document that the nature of the procedure precluded the use of an ETCO2 monitor.

Q Does the new ASA Standard apply to labor epidurals?

A In cases involving patients receiving labor epidurals who have not been moderately or deeply sedated "the adequacy of ventilation shall be evaluated by continual observation of qualitative clinical signs." If the patient has been sedated, the PPM policyholder should make a clinical judgment as to whether the patient has received moderate or deep sedation. If the PPM policyholder believes the patient has received moderate or deep sedation, he/she should comply with the new ASA Standard.

Q Does measuring ETCO2 through a nasal cannula comply with the new ASA Standard?

A When using a nasal cannula to monitor ETCO2, room air may dilute the sample making the accuracy of the measurements questionable. However, the new ASA Standard requires evaluation by continual observation of "qualitative" (not "quantitative") clinical signs and monitoring for the "presence" (not necessarily the accurate level) of exhaled carbon dioxide. While PPM is seeking further clarification of this question from the ASA, it appears measuring ETCO2 through a nasal cannula would comply with the new ASA Standard.

Frequently Asked Questions (continued)

Q The new standard for basic monitoring states the level of monitoring for "no sedation" and the level of monitoring for "moderate and deep sedation." Does a "light sedation" category exist? For instance, for cataract surgery I do not administer more versed than is typically given as a preoperative anxiolytic. Does that sedation require ETCO2 monitoring?

A The term "light" sedation would fall under the category "minimal sedation or anxiolysis" as defined in the ASA Continuum of Depth of Sedation. The new ASA Standard for Basic Anesthetic Monitoring does not address monitoring for "light sedation." Accordingly, it does not appear ETCO2 monitoring would be required for "light sedation." PPM recommends documenting in the patient's medical record that "minimal sedation" or "anxiolysis" was administered. Even in the case of minimal sedation, if the equipment is available, PPM recommends that ETCO2 monitoring be utilized if feasible.

Q Does PPM recommend or endorse any specific ETCO2 monitors or equipment?

A No. PPM does not recommend or endorse any specific ETCO2 monitors or equipment. PPM policyholders should work with the hospitals, surgery centers, and other facilities where they practice to ensure the facilities are aware of the new ASA Standard and purchase the necessary monitors and/or equipment.

For other questions regarding your professional liability coverage please call PPM's Underwriting Department at 1-800-562-5589.

References:

American Society of Anesthesiologists, Newsletter, March 2011, Vol. 75, No. 3, pp. 44-45.

PPM Professional Liability Insurance Policy, Part 5-6, Practice Standards, p. 4.

American Society of Anesthesiologists website, See www.asahq.org. ❖

PPM Medical Board Investigation Defense Expense Coverage

Since 2007, PPM has offered medical board investigation defense expense coverage exclusively to PPM policyholders in all states in which PPM writes business. This coverage will pay for defense expenses incurred in the event you become the subject of an investigation by your state licensing board. Most states require PPM to report any settlement or judgment on behalf of a PPM policyholder to the state medical board. These reports often automatically trigger, by statute, an investigation by the state medical board. Medical board investigations are also sometimes initiated by third-party complaints to the medical board.

PPM's Medical Board Investigation Defense Expense coverage for individual PPM policyholders will pay up to $25,000 for defense expenses of each such investigation with a maximum of $75,000 for all investigations first reported during a twelve month period. According to Wade Willard, PPM's Vice President of Claims, "Legal costs associated with responding to Medical Board investigations can be substantial." While PPM's negotiated legal rates remain reasonable, physicians attempting to secure their own legal representation may pay as much as $400 per hour.

This defense expense coverage differs from that offered by other insurers in that PPM's coverage has **no deductible** and **no co-payment requirement**. Further, PPM will pay these expenses directly on your behalf, as opposed to you paying these expenses, and then seeking reimbursement from the insurance company. According to Brent Hodges, PPM's Vice President of Underwriting, "Nearly 62% of PPM policyholders have purchased PPM's Medical Board Investigation Defense Expense coverage. We are reminding those PPM policyholders who have not purchased this valuable coverage that it is available to them for a nominal cost."

PPM's Medical Board Investigation Defense Expense coverage may be added at the inception of the policy period and will cover medical board investigations initiated from the date the endorsement is added to the policy until the coverage or the policy is cancelled.

If you wish to add this coverage to your policy, please contact PPM's Sales or Underwriting staff at 1-800-562-5589. Coverage requests received after the start of the policy period will be considered as requests for coverage beginning with the next policy period. ❖

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In This Issue

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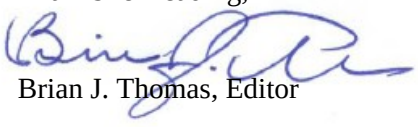
We also remind PPM policyholders of a coverage option for defense expenses incurred in the event they become the subject of an investigation by their state licensing board.

Thanks for reading,



Brian J. Thomas, Editor