



Anesthesia & the LAW

A Professional Liability Newsletter for Anesthesiologists

Summer 1996

Top Ten Anesthesia Claims Analyzed

Dental injury is the most common malpractice injury reported by anesthesiologists according to a recent review of 917 claims reported to Preferred Physicians Medical.

This review of both open and closed claim files broadly categorizes the top ten anesthesia-related claims by patient injury. Steve

Sanford, Vice President, Claims indicates that an

analysis of claim reporting trends provides important information for evaluating, reserving and defending anesthesia malpractice claims. In addition, the Company hopes to utilize this information to develop risk management information for its policyholders.

In this regard, upcoming issues of **Anesthesia & the Law** will focus attention on specific categories

of injury and provide risk management tips for avoiding or minimizing common anesthesia claims. ♦

TOP TEN ANESTHESIA CLAIMS	
1. Dental.....	159
2. Death.....	157
3. Nerve Damage	145
4. Brain Damage	54
5. Burns	26
6. Infection	25
7. Eye Injury.....	18
8. Awareness	17
9. Retained Instruments....	14
10. Pneumothorax	12

Dental Injury Leads List of Most Common Claims

Although dental claims account for a relatively small percentage of Company losses, dental claims reported to Preferred Physicians Medical continue to lead the list of most frequently reported injuries. In response, Preferred Physicians Medical has developed guidelines to minimize the number of claims, as well as reducing the inconvenience associated with processing, investigating and resolving such claims. The guidelines also take into consideration concerns regarding reports to the National Data Bank, State licensing boards and credentialing organizations.

Before a dental injury occurs. Informed consent is a key factor in managing dental claims. Given the frequency of dental injury, anesthesiologists are encouraged to include this risk on their informed consent record. Such documentation helps to establish reasonable patient expectation and diminish the perception of medical negligence. In addition, Preferred Physicians Medical recommends a specific medical

record entry noting patients at increased risk of dental injury. This would include patients with poor dental hygiene, caps or bridgework. Pre-existing dental conditions not only increase the patient's susceptibility to injury, but the higher cost associated with repairing such injuries greatly increases the likelihood the patient will pursue a claim.

After a dental injury. The patient should be notified at the earliest opportunity. Notification should reference the informed consent disclosure. The anesthesiologist should also instruct the patient to schedule an appointment with the patient's own dentist. At this point, patients may ask whether the anesthesiologist will assume responsibility for the cost of dental treatment. Preferred Physicians Medical recommends that policyholders avoid an assumption of responsibility. A better approach is to defer this decision by expressing a willingness to consider the request or refer the matter to the anesthesia office for review.

Deferring an assumption of responsibility provides an opportunity for the anesthesiologist and the insurance carrier to properly investigate the facts surrounding the dental injury. Investigations frequently reveal a significant history of pre-existing dental conditions that explain the injury.

In many instances an experienced office administrator can work with the insurance carrier to implement an appropriate response to dental claims. Many anesthesia groups have utilized our guidelines to develop a policy for resolving dental claims.

For example, a number of groups elect to resolve dental claims within a certain monetary range through an adjustment in the anesthesia bill or by direct payment of the dental bill. This approach avoids significant insurance investigation and reporting requirements. Other groups prefer to forward dental claims to Preferred Physicians Medical for investigation and handling.

Policyholders may obtain more detailed information regarding dental claim guidelines from Pam Gliddon at Preferred Physicians Medical.♦

Vision Loss after Peribulbar Block: Iowa Jury Returns Plaintiff's Verdict

Plaintiff, a 67 year old female, claimed a significant vision loss following a double perforation of the globe during cataract surgery with a peribulbar block.

Plaintiff's \$225,000 demand prior to trial was rejected by Preferred Physicians Medical and its anesthesiologist based on the strength of the defense case.

Plaintiff's expert, a retired anesthesiologist who had never performed a peribulbar block, opined that eye blocks should be performed only by ophthalmologists, not anesthesiologists.

Defendant's anesthesia expert testified that an inadvertent perforation of the globe was a recognized risk of the procedure and that the anesthesiologist had

conformed to the standard of care in performing the block. This expert opinion was bolstered by the defendant anesthesiologist, testimony from an ophthalmology expert, as well as, the plaintiff's own treating ophthalmologist.

Despite exceptionally strong defense testimony, the jury returned a plaintiff's verdict for \$328,000.

Post-trial interviews with the jurors indicated that despite the evidence, jurors continued to believe that the injury could have been prevented with the exercise of greater care.

Contact Janet Richeson or Steve Sanford at Preferred Physicians Medical for more information.♦

R I S K M A N A G E M E N T A N A L Y S I S

Preferred Physicians Medical's post-trial review suggests that sympathy for an elderly patient may have been a significant factor in this jury's verdict. This sympathy factor is likely to be present in the majority of eye injury cases given the age of the patient population undergoing such procedures.

A review of similar eye injury cases indicates the most effective method to avoid or minimize liability is to specifically include the risk of perforation and vision loss on both pre-printed materials provided to patients and the informed consent document. Further, Preferred Physicians Medical suggests supplementing written documentation with a pre-operative discussion of this specific complication. While a number of anesthesiologists have indicated a reluctance to emphasize this relatively infrequent risk, the significance of the injury and potential jury verdict potential weighs heavily in favor of disclosure. Anesthesiologists should be aware that jurors tend to react very negatively to a physician's failure to disclose significant, albeit infrequent risk. Moreover, plaintiff attorneys are adept in construing a nondisclosure as self-serving or misguided paternalism.

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