

## ***Arizona Defense Verdict in Death Case***

**A** 35-year-old male with an abscessed tooth underwent incision and drainage of the abscess and extraction of the tooth. An awake fiber-optic intubation was performed because the patient was obese and his neck and chin area were swollen from the abscess. The procedure was completed uneventfully. Upon meeting the criteria for extubation the endotracheal tube was removed and the patient exhaled but could not inhale. After several attempts the patient was seemingly re-intubated but only showed brief improvement. A tracheostomy was performed and upon opening the trachea a rush of air contemporaneous with hand ventilations was noted. The patient went into cardiac arrest and could not be resuscitated.

The plaintiff alleged the patient was extubated prematurely and that attempts to re-establish an airway were not timely. Preferred Physicians' insured declined settlement and the case was decided at trial. At trial the plaintiff's anesthesia expert believed

attempts to re-intubate the patient were excessive and that a surgical airway should have been performed sooner. However when cross examined, plaintiff's expert admitted that he could not say to a reasonable degree of medical probability that the patient would have lived if a surgical airway had been performed sooner.

The defense utilized Jonathan Benumof, M.D. of San Diego, California as its standard of care expert. Dr. Benumof explained that two unusual events occurred almost simultaneously resulting in the arrest and inability to resuscitate the patient. These events being marked edema of the aryepiglottic fold that prohibited inhalation, while septic shock syndrome from the abscess lead to cardiac arrest.

The jury listened closely to the medical evidence and rendered a defense verdict. Winn Sammons of Phoenix, Arizona tried this case to the jury. David Ruder at Preferred Physicians Medical managed the file and can provide additional information. ❖

## ***Defense Verdict in Florida Death Case***

**D**ecedent, a 47-year-old male, underwent a Pars Plane Vitrectomy with monitored anesthesia. Morphine was given as a pre-operative sedative and IV sedation with propofol was started prior to the surgeon giving a retrobulbar block. Shortly after the surgeon began administering the retrobulbar block, the patient had progressive bradycardia and became unresponsive. He was intubated and ACLS protocol followed but he could not be resuscitated.

Although Preferred Physicians agreed to investigate the possibility of settlement, negotiations were unsuccessful. The matter was presented to a jury for resolution of the dispute.

Plaintiff alleged that an overdose of propofol and morphine led to respiratory and cardiac arrest resulting in death. Plaintiff's anesthesia expert, Mark Comunale, M.D. of Georgetown, Massachusetts, espoused the

overdose theory as well as a delay in resuscitative measures as the cause of death.

Preferred Physicians and its policyholder utilized Kathryn McGoldrick, M.D., from New Haven, Connecticut to testify that the standard of care was met. Dr. McGoldrick, who has extensive experience in ophthalmic anesthesia, not only testified that anesthesia personnel met the standard of care, but that the retrobulbar block was the cause of the arrest. She testified that the block, performed by the surgeon, was performed appropriately but resulted in brain stem anesthesia and prevented resuscitation.

The jury returned a verdict in favor of the defense. Gene Ciotoli from North Palm Beach, Florida tried this case. Gavin Fritton managed the file for Preferred Physicians and can provide additional information. ❖

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## ***Illinois Jury Returns Verdict Against Co-Defendants***

**D**ecedent, a 70-year-old male underwent an open cholecystectomy which confirmed pre-operative diagnoses of cholelithiasis and cholecystitis with possible porcelain gallbladder. The patient's medical history also included congestive heart failure, renal insufficiency, diabetes and obesity.

A Preferred Physicians policyholder performed anesthesia for the procedure, which the patient tolerated well. Post-operatively, the patient's condition declined and he was transferred to SICU on a ventilator. The patient did not want to be placed on a respirator or on dialysis and died the next day. A provisional autopsy report showed cardiomegaly with marked left ventricular hypertrophy, pulmonary congestion and edema, plural fluid and hypertension. Also noted was post-operative bleeding, white adrenal gland nodules, left adrenal nodular cortical hyperplasia, granular bilateral kidneys and arterial sclerosis.

Plaintiff alleged Preferred Physicians' insured failed to recognize pre-operative congestive heart failure, post-operative intra-abdominal bleeding and hypovolemic shock. They also alleged misdiagnosed

cardiogenic shock and failure to transfuse adequate fluids, blood and blood products.

Plaintiff's anesthesia expert, William Minore, M.D. of Rockford, Illinois, testified that the patient had signs and symptoms of congestive heart failure which warranted the postponement of this surgery, or Preferred Physicians' insured's refusal to perform anesthesia. He also believed closer and more invasive monitoring post-operatively was indicated.

The defense utilized Robert Caplan, M.D. of Seattle, Washington as its anesthesia expert. Dr. Caplan was supportive of the anesthesia care rendered and believed that the appropriate post-operative care was provided, especially once transferred to SICU.

The jury entered a defense verdict on behalf of Preferred Physicians' insured, but rendered verdicts against co-defendant physicians totaling \$1.5 million.

Mark Karasik of Chicago, Illinois tried this case. Wade Willard at Preferred Physicians Medical managed the file and can provide more detailed information about this case. ❖

## ***Texas Defense Verdict in Videotaped Awareness Case***

**P**laintiff, a 38-year-old female, underwent a planned C-section due to pre-eclampsia, gestational diabetes, fetal macrosomia and morbid obesity. Epidural anesthesia was utilized for the procedure. The pinch test did not elicit any pain, only the patient's indication that she could feel pressure. When the procedure began the patient complained that she could feel the incision, but the C-section continued. The anesthesia team administered various medications in response to the patient's complaints of pain, which continued throughout the delivery and tubal ligation.

After unsuccessful negotiations, the plaintiff's last demand was \$150,000. Thus Preferred Physicians elected to take this case to trial. The plaintiff's most formidable evidence was a videotape of the entire procedure demonstrating the patient's complaints of pain and discomfort. Preferred Physicians believed that even with the videotape the case was defensible because the circumstances facing the insureds supported their clinical decisions and care rendered.

Plaintiff's anesthesia expert was Jed Shay, M.D. of Houston, Texas. Dr. Shay testified that upon the plaintiff's complaints, the anesthesia should have been immediately converted to general anesthesia.

Defendant's anesthesia expert, Alan Frankfurt, M.D., testified that general anesthesia was not a safe option in light of the mother's pre-existing conditions and status as a full stomach patient. Due to the risks associated with inducing general anesthesia, including aspiration and difficult intubation, the proper course for safety of the mother and child was to continue with the epidural anesthesia.

Based on the strength of our insureds as witnesses, expert witnesses, and a thorough explanation of the medical facts involved in the decision-making process, the jury returned a verdict in favor of the defense.

Defense counsel was Joel Steed of Fort Worth, Texas. Contact Shani Dorn at Preferred Physicians Medical for details regarding this case. ❖

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**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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