PREFERRED PHYSICIANS MEDICAL
Risk Retention Group, Inc.

Anesthesia & the LAW

A Professional Liability Newsletter for Anesthesiologists **Issue 12**

Nerve Damage from Regional Blocks placed under General Anesthesia

Placing regional blocks while patients are under general anesthesia has led to a significant number of large losses. At the same time, Preferred Physicians Medical has noted a growing body of medical literature suggesting that this technique is inappropriately risky in most cases. This literature has also become an important tool for plaintiff attorneys in recovering substantial settlements and a challenging obstacle in defending anesthesiologists using this technique.

Although the use of this technique in adults has not become widespread, a handful of cases over the last couple of years has resulted in losses totaling $4,236,000. Additional cases are pending. Given the substantial losses involved, this issue will also be addressed in Preferred Physicians Medical's underwriting process.

Due to the difficulty in defending this technique and the significance of the damage potential, Preferred Physicians Medical strongly recommends against using this technique for medical convenience or patient comfort. While there may be cases where this technique is medically indicated, anesthesiologists must carefully discuss and document the risks and benefits of the approach with the patient. Preferred Physicians Medical recommends the inclusion of a specific notation initialed by the patient or the use of a "Supplemental Anesthesia Consent Form." Our Claims Staff can review your current informed consent process and assist in the development of an appropriate informed consent document for your practice. ❖

Recommended reading:

- 🕮 Caplan, Robert M., "Should regional blockade be performed on anesthetized patients?" ASA Newsletter, April 2001; 65(4): 5-7, 19.
- 🕮 Beneumof, J.L., "Permanent loss of cervical spinal cord function associated with interscalene block performed under general anesthesia." *Anesthesiology* 2000; 93: 1541-1544.

Preventable Anesthesia Malpractice Claims

In this issue of Anesthesia & the Law, we focus attention on the most preventable anesthesia complications reported to Preferred Physicians Medical. Each of the areas identified involves an injury that is well recognized and avoidable. Unfortunately, many anesthesiologists have ignored earlier warnings, based primarily on their own personal experience, and continue to engage in practices that are potentially dangerous to patients and extremely costly from a malpractice insurance standpoint.

A recent review of Preferred Physicians Medical's claims data indicates that the preventable claims described in this newsletter have resulted in losses totaling $7,076,656. Absent efforts to reduce the number of preventable claims, policyholder premiums will continue to reflect the costs associated with defending and settling these avoidable injuries.

Throughout this next year, Preferred Physicians Medical will focus its risk management efforts on these preventable anesthesia malpractice claims.

Thanks for reading.

Steve Sanford, Editor

Misuse of Forced-Air Warming Equipment Leads to Avoidable Injury

A number of serious injuries have resulted in recent years from the improper use of forced-air warming devices. One of the most preventable injuries reported to Preferred Physicians Medical is severe burns resulting from the misuse of a forced-air warming system hose. These injuries generally occur when the warming unit hose is utilized without attaching a warming blanket, a practice known as "hosing." In these cases, the hose is sometimes wrapped with a towel or sheet and placed directly between the patient's legs. This improvised approach generally occurs in cases where concerns about hypothermia were not identified and planned for in advance. Hosing is both dangerous and contrary to the manufacturer's design. It is important to note that when used properly, forced-air warming is a safe and effective means of warming patients.

Six recent Preferred Physicians Medical cases involving the misuse of forced-air warming equipment have resulted in losses totaling $1,294,308. Each of the hosing injuries described below could have been avoided through the safe, effective and recommended use of forced-air warming devices:

- In Illinois, an 85-year-old female treated for abdominal aortic aneurysm under general anesthesia sustained third-degree burns to her left foot and ankle after nurses failed to properly connect the warming blanket. The nurses, with the permission of the anesthesiologist, inserted the hose under the blanket for the entire course of the procedure. Ultimately, the patient required a below knee amputation after several debridements revealed gangrene of the muscle.

- In Florida, a 78-year-old female in for abdominal aorta aneurysm repair with general anesthesia sustained second- and third-degree burns after the anesthesiologist placed the warming blanket hose between the patient's thighs, without using the warming blanket. The burns resulted in significant scarring.

- In Georgia, a 38-year-old male presented to the ER with several injuries sustained in a motor vehicle accident, including a pneumothorax. While in the hospital the patient underwent an emergency exploratory laparotomy where it was determined that he had a massive laceration to his liver with significant bleeding. Procedures to stop internal bleeding were instituted. During the course of the medical care it was noted that the patient was hypothermic, and a warming blanket was ordered for the upper extremities. At the same time a nurse placed another warming unit hose between the patient's legs without connecting it to a warming blanket. Post-operatively the patient was diagnosed with second- and third-degree burns to the lower extremities.

- In New Hampshire, a 34-year-old female underwent an emergency hysterectomy following labor and delivery. The warming blanket hose was used without a blanket resulting in second-degree burns to the soles of both feet. These burns required debridements of necrotic tissue and resulted in claims of pain and disability, although the patient was ultimately able to return to work.

In an effort to educate health care practitioners about the dangers of hosing, Augustine Medical, the leading forced-air manufacturer has issued detailed warnings about the improper use of forced-air products. This information is available from Augustine Medical at www.stophosing.com. Printed materials, posters and warning stickers are also available.

Given the industry's educational efforts, Preferred Physicians Medical believes it will become increasingly difficult to defend anesthesiologists, CRNAs and nurses who continue to ignore warnings about the potentially dangerous practice of misusing warming devices. ❖

Wrong-Sited Surgery and Patient Mix-Ups

Wrong-sited surgery and patient mix-ups were the focus of the most recent issue of Anesthesia & the Law. Despite compelling evidence that a "Sign Your Site" protocol is the most effective approach for reducing the number of wrong-sited surgeries, many hospitals and surgery centers have failed to implement this policy. Hospitals and surgery centers instead continue to rely on inferior protocols that spread the responsibility for patient and site verification among all health care providers involved in the patient's care. Unfortunately, loss data reviewed by Preferred Physicians Medical suggests that this approach merely reduces each health care provider's ultimate sense of responsibility, thereby increasing the likelihood of a mistake.

Preferred Physicians Medical concludes that the failure to adopt the gold standard "Sign Your Site" protocol will continue to jeopardize patient safety, while at the same time increasing the likelihood of litigation and costly settlements. In addition to the costs and inconvenience of litigation, licensing agencies across the country appear to be implementing aggressive policies for sanctioning health care providers involved in wrong-sited surgeries. Significant probationary periods and fines of up to $10,000 have been reported, even in cases where the anesthesiologist or CRNA is not the primary cause of the mistake. With respect to these sanctions, health care providers should be aware that fines or penalties imposed by licensing boards are not covered by malpractice insurance policies. Also, most insurance policies either exclude coverage or significantly limit reimbursement for attorney fees and expenses incurred in defending this type of disciplinary action.

Eleven recent cases of wrong-sited surgeries reported to Preferred Physicians Medical have resulted in losses of approximately $250,000. Additional cases, including one in which a plaintiff attorney has demanded $1 million remain pending.

If your hospital or surgery center has not adopted a "Sign Your Site" protocol consistent with these recommendations, Preferred Physicians Medical can provide information and materials to assist you in advancing the adoption of an effective hospital policy. We also recommend that anesthesiologists undertake formal steps to bring this concern to the administration of hospitals and surgery centers. Upon request, Preferred Physicians Medical will assist policyholders by drafting appropriate letters that may insulate the anesthesiologist involved in a future claim of wrong-sited surgery.

For more information on the recommendations of the American Academy of Orthopaedic Surgeons, please visit their website at www.aaos.org. You may find relevant articles via the search function using the term "Sign Your Site." A complete copy of the AAOS Task Force report on wrong-sited surgery is available at www.aaos.org/wordhtml/meded/tasksite.htm. ❖

Burns from Warmed IV Bags

Since first reporting on this issue in 1995, Preferred Physicians Medical policyholders continue to report injuries resulting from the use of warmed IV bags. In the majority of reported cases, warmed IV bags are being used as a warming device or to assist with patient positioning. Neither of these uses is appropriate according to the medical literature.

Defending the use of warmed IV bags is nearly impossible given the medical literature and the numerous warnings issued by the American Society of Anesthesiologists and the Patient Safety Foundation. Additional difficulty is encountered when health care providers have to explain the use of microwave ovens, autoclaves and blanket warmers to warm an IV bag, without any methodology for regulating or determining its ultimate temperature. Anesthesiologists continue to express surprise when a serious second- or third-degree burn occurs, despite warnings that such severe burns can be caused by warmed IV bags that do not feel dangerously hot.

Nine Preferred Physicians Medical cases associated with the misuse of warmed IV bags have resulted in total settlements of $476,000, with an average settlement cost of $52,888. In addition, the legal fees and expenses associated with defending and resolving these cases now exceeds $150,000.

Consistent with warnings that have been issued by both the American Society of Anesthesiologists and the Patient Safety Foundation, we are once again reminding anesthesiologists that warmed IV bags should never be used. ❖

Intra-operative Fires

Intra-operative fire is the leading type of burn injury reported to Preferred Physicians Medical. A typical intra-operative fire involves a surgical procedure of the head and neck. Most reported cases involve plastic surgery or ENT procedures. Other cases have arisen from carotid endarterectomies.

The ignition source is generally a surgical instrument, either electro-cautery or surgical laser. The fire is usually fueled by the patient's own hair, surgical drapes, surgical dressings or an alcohol-based prep solution. While ambient air is often sufficient, many intra-operative fires are made far more intense by the administration of oxygen.

The method of oxygen administration frequently forms the basis of a medical malpractice claim against the anesthesiologist. Plaintiff's medical experts will typically criticize an anesthesiologist's failure to both anticipate and reduce the risk of an intra-operative fire. For instance, plaintiff's experts may criticize the use of oxygen in close proximity to the surgical field. If the anesthesiologist is simply blowing oxygen across the patient's face, the criticism may be the failure to use a nasal cannula. If a cannula was used, the criticism may be the failure to intubate.

Regardless of technique, plaintiff's experts will testify that the risk of fire can be easily minimized, if not reduced entirely. These experts will criticize the routine use of oxygen in cases where it is not otherwise indicated. Frequently these experts fault the level of oxygen that was administered and the lack of communication between the surgeon and the anesthesia provider. These same experts routinely indicate that the risk of fire can be greatly reduced by merely discontinuing the oxygen while the surgeon is using the cautery or laser. Anesthesia providers can also take additional steps to dissipate any pooled oxygen prior to the use of electro-cautery or laser, thereby minimizing the danger or at least the intensity of any fire that does occur.

Like most preventable anesthesia claims, defending an intra-operative fire is difficult. A jury will rarely accept the idea that this type of injury is a reasonable complication. Consequently, most intra-operative fire cases are resolved by settlements with contributions from all responsible parties; surgeon, anesthesiologist, and the hospital or its nurses. To the extent the involved health care providers cannot arrive at a reasonable settlement through an apportionment of fault, cases are submitted to a jury. At trial, each party usually attempts to shift blame to the other health care providers involved. The difficulty with this defense tactic is that a jury will likely award significantly higher damages against at least one and perhaps all of the involved health care providers.

Paid losses from twelve Preferred Physicians Medical intra-operative fire cases total more than $500,000, including $262,144 in defense costs. Additional cases are pending. ❖

Anesthesia & the Law is on the Web

As a convenience to our policyholders, the latest issue of Anesthesia & the Law is also available on the Preferred Physicians Medical website, www.ppmrrg.com. You may also visit the website for a brief overview of our operations or to find useful contact information. ❖

Newsletter Editor
Steven R. Sanford, JD
Vice President, Claims
Preferred Physicians Medical

Anesthesia & the Law *is published by*
Preferred Physicians Medical Risk Retention Group, Inc.
7000 Squibb Road, Mission, KS 66202-3255
Telephone: 800-562-5589 Fax: 913-262-3633