Risk Management for Anesthesia Practices: Developing Trends and Current Topics

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Conflict of Interest Disclosure

- Brian Thomas, JD is Vice President - Risk Management for Preferred Physicians Medical, a medical professional liability insurance carrier that provides malpractice insurance to anesthesiologists and their practices. The speaker has no additional financial relationships with a commercial interest to disclose nor any undisclosed conflicts of interest.

Securing Narcotics - Litigation

- Kristen Parker, a surgical technician who had tested positive for Hep C, arrested for diverting fentanyl, injecting herself, refilling syringes with saline and returning them to be administered to patients
- Over 5,000 patients tested; 32 positive for Hep C, 18 genotype matched to Parker’s Hep C virus
- 18 lawsuits defended by Preferred Physicians Medical
- Total indemnity = $1,355,000.00
- Total defense costs = $1,160,188.50
### Securing Narcotics – Standard of Care

- Hospital’s drug storage and security policy stated, in part, “All drugs and biologicals are kept in secure areas, and locked when appropriate”
- Anesthesiologists would prepare syringes of fentanyl in O.R., then leave them in an unlocked drawer of anesthesia cart
- Unsecured syringes were left unattended while retrieving patients from preoperative holding area
- Anesthesiologists testified they believed O.R.s were “secure areas”

### Securing Narcotics – Risk Management Strategies

- Review and comply with hospital/facility drug storage and security policies and protocols
- **NEVER** leave prepared syringes of narcotics unsecured and unattended – e.g. on top of anesthesia cart, unlocked drawer, wrapped in towel, etc.
- Joint Commission and anesthesiology experts support keeping prepared syringes on person; carefully consider whether to keep narcotics on person once dispensed
- Report any suspicious behavior or activity
- Develop and implement drug testing policies

### Endoscopic Sentinel Events - Case Study

- 68 y/o male, ASA III d/t morbid obesity (5’10, 140 Kg, BMI 44), suspected OSA, DM, HTN and diverticulitis presented for elective colonoscopy
- MAC w/ sedation (propofol and lidocaine) O2 nasal cannula at 4L/min
- During procedure endoscopist noted intermittent ventricular ectopy and hypotension followed by bradycardia
- When lights turned back on, patient was noted to be ruddy with a darkened complexion
- O2 SAT was 75% and HR 49, mask ventilation started, O2 SAT 43%, bradycardia to asystole
- COD - hypercarbia, cardiac arrest, anoxic brain damage
Endoscopic Sentinel Events – Expert Criticisms

- Failure to secure airway with LMA or intubate due to high risk
- Failure to use capnography and chart ETCO2
- Failure to recognize and treat hypoventilation
- Lack of vigilance
- Endoscopist's deposition testimony that the anesthesiologist was "not paying attention, talking too much, and showing pictures of his grandchildren on his cell phone."

Distractions in O.R. – Litigation

- Multiple recent lawsuits involving allegations of distractions from texting, iPad and laptop personal use during critical times of procedure
- 4 closed cases – indemnity = $2,670,000; defense costs = $771,712
- 2 notable cases:
  - 1 defense verdict – on appeal; defense costs = $588,399
  - 1 recently settled case – opening demand $1,700,000, plaintiff amended lawsuit to include punitive damages claim

Distractions in O.R. - Evidence

- Metadata and e-discovery
- Phone, text and computer records are discoverable and may be admissible in litigation
- Surgeons and O.R. staff members may provide harmful testimony if the anesthesia provider is distracted in O.R.
- Inflammatory evidence of distractions in the O.R. may anger juries and result in punitive damages, not covered by professional liability insurance
- Social media
Distractions in O.R. – Consequences
- Suspension and non-renewal of privileges
- State medical licensing board investigations/sanctions
- National Practitioner Data Bank reporting
- Significant negative media coverage
- Public relations challenges
- HIPAA violations

Distractions in O.R. – Risk Management Strategies
- Review and comply with practice facilities’ PED policy statements, guidelines and policies
- Implement a “sterile cockpit” protocol during critical phases of procedures
- Limit personal telephone calls and text messages to urgent or emergent situations
- Keep telephone calls to a minimum and brief as possible
- Avoid discretionary Internet-based activities

QUESTIONS?

THANK YOU