Anesthesia and the Law

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Objective:
Participants in this workshop will be provided information relating to the intricacies of the medical-legal process. Case studies and examples will be presented to include common malpractice claims and legal issues when treating minor patients. In addition an overview of the litigation process will be presented.

Legal System Overview

A. Damage caps
   -Non-economic damages –most likely
     -Legislative
       i. Georgia-Overturned, Colorado-upheld $300,000
       -Constitutional Amendment
       ii. Texas $250,000
     -If legislative must go through appellate process before know exactly what affect the cap will have

Economic Damages
   -Not usually subject to cap, plaintiffs have right to present evidence through experts as to how much it will cost for lifetime care (medicals), lost income, loss of services etc.
   -Some states have addressed this issue but it is difficult and subject to appellate court review

Cap on economic and non-economic losses –Virginia

Punitive Damages
   -Very rare in medical malpractice litigation
   -Coverage limitations

B. Cap alternatives
   a. Brain Damaged Infant Funds
      -New York, Florida
         Usually the biggest opposition is from plaintiff attorneys that pursue/specialize in these types of cases.

   b. State Insurance Plans
      -Kansas, Pennsylvania, South Carolina
      -Can act in essence as a cap as the state typically will only be held liable to policy limits
c. Statutory Caps on Attorney Fees
   - Have little effect on the overall value
   - Are helpful to getting more funds to the plaintiff in an otherwise very inefficient system in which fees can reach upwards of 50% of the recovery

C. Statute of Limitations
   - Average 2-3 years
   - With minors usually until they reach 18 years old
   - Oftentimes we will see litigation filed around the age of 4-6 yrs. At this time the children are getting into school and testing will reveal or diagnose developmental and educational delays

D. Insurance Limits
   - Knee jerk reaction, more is better
   - We emphasize parody of limits with other specialties you work with
   - Medical Malpractice litigation is not a pursuit of the truth. It is a pursuit of money
   - One of the first questions asked by plaintiff attorneys in a medical malpractice lawsuit
   - The focus of a lawsuit generally follows the policy limits of the defendants. This is particularly important in states where limits tend to vary
   - The ultimate value of a case is in large part determined by the policy limits of the defendants
   - Resistance from insurers and reinsurers
   - Factors, hospital contracts, state requirements, board requirements

E. Medical Board investigations
   - More important than medical malpractice lawsuits
   - Political animal varying greatly among states
   - Defending is oftentimes similar to defending a lawsuit
   - Some states automatically investigate care involved in lawsuits
   - Patient complaints to a board will usually be investigated
   - Contact your carrier to determine if you have coverage
   - Coverage for fines, penalties is usually prohibited

F. Electronic Medical Records
   - They are coming, resistance is futile
   - Get in on the ground floor and participate in the selection of the system
   - In general make the defense of a case more straightforward
     - Errant readings
     - Discovery issues
G. Good Samaritan Protection
   - Promote the rendering of emergency aid
   - Generally hold a gross negligence standard for recovery
   - Most apply outside of the hospital
   - Mission work, treatment in free clinics may also qualify
   - Check with sponsoring organization and local laws

F. Right to refuse medical care
   - Generally competent adult patients have the right to refuse medical treatment.
     - Documentation, Advanced Directives, informed consent
   - The right to refuse medical treatment when a minor is involved is more complex
     - The courts have generally ordered medical care for minors in life threatening situations when refusal is based on religious grounds
     - Possible harm to a child is what is generally looked at
     - Hospital should have protocol to deal with these situations, oftentimes in conjunction with local court procedures
     - First objective should be to obtain a court order

Factors to be considered

1. Whether the patient voluntarily sought treatment (if treatment is voluntary or elective, a patient's refusal may be more valid, as compared to refusal by a patient brought to the hospital in an emergency situation);

2. Whether the transfusion/treatment is necessary to save the patient's life (the more necessary, the greater the chance the court may order transfusion/treatment);

3. The age of the patient (if an infant, parental refusal is not usually valid; if a teenager, joint refusal of the patient and parents may be valid);

4. Whether the patient is pregnant, and if so, how many weeks (the further along, the greater chance the transfusion/treatment may be court-ordered);

5. Whether the patient is solely responsible for innocent third parties (a single parent, even if a competent adult, may have their refusal overridden); and

6. Efficacy and risks of treatment and alternatives available.
Pediatric Anesthesia Top 10
1. Brain Damage
2. Death
3. Nerve Damage
4. Burns
5. Tissue Injury
6. Dental
7. Medication Errors
8. Wrong Site/Patient Mix-ups
9. Retained Instrument
10. Aspiration

Anesthesia Top 10
1. Dental
2. Death
3. Nerve Damage
4. Brain Damage
5. Tissue Injury
6. Surgical Complications
7. Vision Loss
8. Burns
9. Infection
10. Retained Instruments

Litigation overview through case studies

Case Study #1
Patient mix-up

Case Study #2
Operating Room Fire

Case Study #3
Nerve Damage

Case Study #4
Medication Error