ANESTHESIA LIABILITY

Purpose of risk management recommendations

OMIC regularly analyzes its claims experience to determine loss prevention measures that our insured ophthalmologists can take to reduce the likelihood of professional liability lawsuits. OMIC policyholders are not required to implement risk management recommendations. Rather, physicians should use their professional judgment in determining the applicability of a given recommendation to their particular patients and practice situation. These loss prevention documents may refer to clinical care guidelines such as the American Academy of Ophthalmology's *Preferred Practice Patterns*, peer-reviewed articles, or to federal or state laws and regulations. However, our risk management recommendations do not constitute the standard of care nor do they provide legal advice. Consult an attorney if legal advice is desired or needed. Information contained here is not intended to be a modification of the terms and conditions of the OMIC professional and limited office premises liability insurance policy. Please refer to the OMIC policy for these terms and conditions.

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RISK ISSUE

There are numerous factors to consider when assessing potential anesthesia liability during elective procedures. These include evaluation of the **location of the procedure, administration of anesthesia, monitoring of the patient, level of sedation, patient selection criteria, pre-procedure/post-procedure instructions, and emergency response plans**. The state in which the surgeon practices has different laws based on the evaluation considerations. The surgeon should be aware of these liability risks for compliance, patient safety, and risk mitigation.

BACKGROUND

LOCATION OF PROCEDURE

- **Hospital**
  The hospital's governing body must approve the specific anesthesia service privileges for each practitioner who furnishes anesthesia services, addressing the type of supervision, if any, required. The privileges granted must be in accordance with State law and hospital policy. CMS Regulations and Guidance
- **Ambulatory Surgery Center (ASC)**
  These are licensed and accredited facilities that have their own criteria for credentialing anesthesia providers. Review the ASC criteria for minimum

standard guidelines concerning anesthesia administration, monitoring, and recovery.
ASC Association Accrediting Organizations
ASCA State Association Contacts

- **Office-based surgery (OBS)**
  OBS locations may have little or no regulation, oversight, or control by federal, state, or local government. Become familiar with any respective state statutes to ensure minimum standard guidelines are followed. This includes the level of sedation allowed in the setting, who can administer anesthesia, and equipment required in case of an adverse event.
  FSMB OBS
  AANA State Specific

ADMINISTRATION OF ANESTHESIA

- **Anesthesiologist**
  Physician with education and training who will medically evaluate the patient's fitness for surgery and anesthesia, determine any potential risks, manage the patient's medical condition during surgery, treat any complications, and supervise post-operative care.
  ASA Statements and Practice Parameters
- **CRNA**
  Nurse with a minimum master's degree from an accredited nurse anesthesia program and one year of work experience as an RN in a critical care setting. By 2025 all new CRNAs must hold a doctoral degree to practice.
  - Scope of practice AANA Scope of Practice
  - Prescriptive authority by state AANA Prescriptive Authority
  - In 2001, CMS changed the federal rule regarding requiring physician supervision of CRNAs by allowing states to "opt-out" of the requirement. The ASA and AANA track states that have opted out of this rule that applies to hospitals and ASCs.
    Opt-Outs
    AANA State Specific
  - Surgeon liability AANA Surgeon Liability
- **RNs trained to administer and monitor**
  Registered nurses follow similar steps to obtain their license, but specific requirements vary by state. Education consists of an associate or bachelor's degree in nursing.
  - RN requirements by State
  - Position Statement by State Sedation Policies by State
  - State laws or regulations governing office-based surgery practice
    FSMB OBS
  - ASA Statement on RNs and Anesthesia
  - Certified Sedation RN (CSRN)

MONITORING OF PATIENT DURING PROCEDURE AND POST-PROCEDURE

- Oxygenation, ventilation, circulation, and temperature should be continually monitored and evaluated
- The surgeon performing the procedure should not be responsible for administering the anesthesia and monitoring the patient
- Standards for Basic Anesthetic Monitoring ASA Anesthesia Monitoring

LEVEL OF SEDATION

- Continuum of depth of sedation Depth of Sedation
- Monitored Anesthesia Care (MAC) versus Moderate Sedation ASA MAC vs Moderate Sedation
- Length of time of procedure

PATIENT SELECTION CRITERIA

- American Society of Anesthesiologists (ASA) Physical Status Classification ASA PS Classification

PRE-PROCEDURE AND POST-PROCEDURE INSTRUCTIONS

- Preanesthesia Evaluation ASA Preanesthesia Evaluation
- Clearance from other providers (cardiology, primary care, endocrinology, etc.)
- Holding and restarting any prescribed medication
    - Consider if you need to discuss with the prescribing provider and document
    - Preanesthesia Care ASA Preanesthesia Care
- Fasting time frames in pre-procedure instructions ASA Preop Fasting Guidelines
- GLP-1 agonists holds prior to procedures
- Time-out includes anesthesia provider
- Postanesthesia Care ASA Postanesthesia Care

EMERGENCY RESPONSE PLAN

- Conducting emergency drills at the facility with all staff members including the anesthesia provider
- Prevention and Management of OR Fires ASA OR Fire Prevention
- Equipment available – dependent on facility licensing requirements
    - oxygen, mechanical ventilation assistance, cardiac monitor, defibrillator, cardiopulmonary resuscitation drugs, naloxone

ASSESSMENT

Procedures utilizing anesthesia can be performed in hospitals, ambulatory surgery centers, or in office settings. Sedation can be administered by anesthesiologists, certified nurse anesthetists (CRNAs), or trained RNs, depending on various factors including state laws and regulations.

Patient selection criteria are essential to determine if a patient is a candidate for a particular procedure, which sedation level is appropriate, and what setting is reasonable. Consideration of any medical or medication clearance or guidance from other providers should be assessed before the procedure. Determining if any medications should be held and fasting timelines should be included in pre-procedure instructions. Discussion of risks for elective procedures under sedation should be thoroughly consented to and documented in the medical record by the surgeon and anesthesia provider. Discharge instructions should be provided to inform the patient of symptoms that require emergent care, when to restart any held medications, and follow-up visit requirements.

You may be asked to supervise a CRNA due to federal law if your state hasn't "opted out" of the physician supervision requirement. CRNAs practice autonomously and will be held accountable for the standard of care of their scope of practice. Agreeing to sign off on the supervision of the CRNA does not mean the ophthalmologist has agreed to accept the liability exposure of an anesthesiologist. The surgeon may rely on the CRNA as the anesthesia expert. Courts generally focus on the amount of control the physician exercises over the anesthesia provider, whether a CRNA or anesthesiologist. Additionally, CRNAs may not be permitted to order medications in the state they practice, and part of the supervision duties may require the surgeon to order the anesthesia medications. Establishing protocols with input from anesthesiologists to standardize anesthesia administration is advised. Strict credentialing criteria of CRNA competency before agreeing to supervision can reduce liability. Include CRNAs in routine emergency drills. You may want to consider contacting a healthcare attorney for advice when asked to supervise a CRNA.

Due to the anesthesia provider shortage, RNs have been delegated to administer anesthesia in some settings. This has been common in office-based surgery in states that permit the practice. RNs can administer anesthesia and monitor the patient if it is within their scope of practice in the respective state and they have been credentialed by the facility where the procedure is being performed. There are risk concerns regarding the background, skills, experience, and education to recognize complications or rescue a patient who goes into deeper sedation. You may want to consider contacting a healthcare attorney for advice when considering performing a procedure with an RN administering anesthesia.

Lastly, there have been instances in which the ophthalmologist is asked to serve as the anesthesia provider and surgeon during a procedure. This is not recommended from a risk or liability perspective. The surgeon performing the procedure should not be responsible for administering the anesthesia and monitoring the patient. There are patient safety considerations and liability risks associated with this situation due to the lack of background,

skills, experience, and education the ophthalmologist has in the role of anesthesiologist, as well as the distraction of the ophthalmologist from their focus on the procedure.

The surgeon has the main responsibility in the pre-procedure assessment of obtaining clearance, if appropriate, and determining medication holds, pre-procedure instructions, location of the procedure, and patient selection. Ultimately, liability exposure will be based on the event specifics, the errors or omissions of individual providers, or any vicarious liability exposure of involved parties.

RISK RECOMMENDATIONS

- Implement a policy for patient selection criteria based on the location of the surgery and type of sedation; obtain medical and medication clearance when warranted
- Require strict credentialing criteria for CRNAs you supervise
- Develop a surgical safety checklist, which includes a time-out process, and engage the procedural team to ensure the correct patient, correct procedure, and correct site
- Institute policies and procedures for recovery, discharge, and follow-up care
- Include preoperative instructions and discharge instructions in patient information
- Ensure monitoring equipment has a backup electrical source and is maintained routinely
- Assess the availability of emergency drugs and resuscitative equipment
- Develop an emergency response plan for complications or catastrophic events (fire) and conduct drills with all procedural team members
- ACLS certification for surgeon supervising CRNA or RN
- Establish patient transfer agreements with other facilities for adverse events that require higher levels of care

RESOURCES

1. American Society of Anesthesiologists (ASA) asahq.org
2. American Association of Nurse Anesthesiology (AANA) aana.com
3. Ambulatory Surgery Center Association (ASC) ascassociation.org
4. Federation of State Medical Boards (FSMB) fsmb.org
5. American Association of Moderate Sedation Nurses aamsn.org
6. OMIC Surgical Safety Checklist
7. Office Based Surgery for Adults
8. OMIC anesthesia closed claims

Need confidential risk management assistance?
OMIC-insured ophthalmologists, optometrists, and practices are invited to contact OMIC's Risk Management Department at (800) 562-6642, option 4, or at riskmanagement@omic.com.