



Beyond ACOEM Treatment Guidelines: Work Comp Treatment Committee Meets

Randall W. Smith, M.D., Editor

The Division of Workers' Compensation (DWC) recently appointed the members of its Medical Evidence Evaluation Advisory Committee which met for the first time on 3/19/2007. The 16 member committee is composed of the usual players in the Comp arena including chiropractic, neurology, psychology, psychiatry, occupational medicine, internal medicine, family practice, podiatry, acupuncture, anesthesia/pain (2), PT, OT, physiatry, orthopedic surgery and neurosurgery. It is the committee's job to recommend treatment for industrial injuries not clearly or adequately addressed by the American College of Occupational and Environmental Medicine (ACOEM) guidelines which are the treatment guidelines mandated for use in California.

The neurosurgeon appointed to the committee is Praveen Mummaneni, M.D., Associate Professor from UCSF, where he heads up their spine fellowship program, spine center and minimally invasive spine program. He did his residency at UCSF then a spine fellowship and four years on the faculty at Emory, joining the UCSF faculty in 2006. He has limited experience with the California work comp system but has extensive experience with treatment guidelines being one of the authors of the AANS/CNS guidelines for lumbar fusion published in the JNS:Spine in 2005 and is presently on a similar body evaluating evidence for guidelines for cervical fusion. He reports that the committee meeting on the 19th was a collegial affair with consensus reached on the value of ulnar nerve decompression at the elbow (simple decompression was deemed acceptable, anterior transposition was acceptable in rare cases only, and submuscular transposition was not deemed to be supported by the literature), limiting epidural steroid injections to two if no improvement after the second (the ACOEM requirement of a radiculopathy being present remains), confirmed the legitimacy of dorsal column stimulators and morphine pumps to treat some chronic pain but only after a psychological evaluation and that the published studies on nucleoplasty are insufficient to place that procedure in work comp therapeutic options.

In speaking with Dr. Mummaneni, I got the distinct impression he is a sensible pragmatic man who eschews Class III data (personal experience/common practice) and requires a number of good Class II or Class I studies before giving his imprimatur. The committee chairperson, Dr. Anne Searcy, will allow committee members to place items on each meeting's agenda if the member thinks there is adequate published support for a treatment and committee members are free to discuss committee deliberations, which are held behind closed doors, with outside interests so Dr. Mummaneni will be free to keep CANS apprised of what happens at each meeting. I would think that if a CANS member would like to have his/her pet treatment idea considered by the committee, a request can be made to Dr. Mummaneni to carry it forward but only if one can supply good published evidence that it works. Dr. Mummaneni can be reached at MummaneniP@neurosurg.ucsf.edu. One should bear in mind that the committee is advisory to the DWC so a committee recommendation may not translate into a DWC policy. It remains to be seen how the committee's recommendations are treated by the DWC. ❖

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Randall W. Smith, M.D.

Novel Ways to Sue Docs

Just when you thought it was safe to go back in the water the sharks in the plaintiffs' bar are finding new hunting grounds. In North Carolina, a psychiatrist is being sued for violating HIPAA by allowing an office manager access to a patient records and subsequently disclosing a patient's psych information to a third party without consent. Lesson I: Have clear office rules about by whom and to whom patient information disclosure is conducted. As I understand it, without written patient consent we can only disclose medical information we possess or have access to for billing purposes when the payor requires such documentation, to the referring physician, because of a subpoena or if the patient is suing you. The NC case has been ruled a non-medical liability case since it didn't involve direct patient care so the doctor's malpractice insurance probably won't be valid for defense. Lesson II: See that you have HIPAA violation insurance; some malpractice policies include it in their coverage.

The Kansas Supreme Court ruled that docs can be considered "suppliers" and sued under that state's Consumer Protection Act. A patient with a poor low back fusion outcome couldn't find a medical expert to support a malpractice claim so sideslipped into a claim that the surgeon's personal history of good outcomes doing the fusions was less than 50% and did not match his pre-surgical statement it was highly likely to relieve her pain. How this might play in California is unclear but you can bet the plaintiffs' bar noses are in the California Consumer Protection rules as you read this. It may be that an individual surgeon's outcomes could be discovered by subpoenaing all his/her charts that the office computer identified as having undergone a particular procedure and if the good outcomes are limited, then unless that outcome history was disclosed to the patient, a violation of a consumer law could be deemed to have occurred. Lesson III: Clearly document what you say about chances for improvement and be aware of your personal success rate when using a procedure. One wonders how the office charts read in those patients who undergo a two or three or more level lumbar fusion for only axial back pain. ❖

CA Health Plan and the CMA

Not much seems to be happening in the health insurance for everyone debate. The coalition of the CMA with some insurers and others doesn't appear to be gaining any traction among the various political camps in Sacramento. It would be nice if some group brokered a breakthrough but no one seems to want to take the point position probably because the point man is so frequently the first to be shot down. ❖

MICRA

It has been noted that for the first time in a long time, no anti-MICRA bill has been introduced in the state legislature by the routine bill deadline. This does not mean no activity in this arena but any MICRA modification would now have to be introduced as a spot bill or attached to another bill as an amendment. One waits for the other shoe to fall. ❖

Neurosurgical Positions Available/Wanted

Any CANS member who is looking for a new associate/partner or who is looking for a position (all California neurosurgery residents are CANS members and get this newsletter) is free to submit a 150 word summary of a position available or of one's qualifications for a one time posting in this newsletter. Submit your text to me by E-mail (rws-avopro@sbcglobal.net) or fax (858-683-2022). ❖

CORRECTION: There is no correction that needs to be mentioned about the February issue. We finally got one completely right.

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Guest Editorial

Moose Abou-Samra, M.D., Ventura

Recently, the SPORT study-Spine Patient Outcomes Research Trial-was published in JAMA, November 22/29, 2006-volume 2956, N0 20. And it was received by the popular press with big fanfare! Indeed, it was big news: Non-operative treatment of lumbar disc herniations is as effective as surgery: A catchy title and a catchier conclusion.

Even our major professional organizations, the AANS, CNS and their joint section on spine, issued a luke-warm statement welcoming the study and indicating that we've known for awhile that non operative therapy is sometimes as effective as surgery. To be politically correct they even called it a "Major Scientific Study" ...

Why would a worker compensation adjuster approve surgery for anyone with a herniated lumbar disc, if the statistics derived from a large multi center study indicates that surgery is no better than non-operative therapy in the long term? Why would any insurance?

Of course, when I read the study carefully, I discovered several problems in this "major study." Below are just a few of the deficiencies:

- 40% of the patients that were selected for the non-operative arm of the study chose to break the protocol because of the intensity of their pain. They did well with surgery!
- The fact that non-operative therapy, even if associated with improvement of symptoms, is often associated with lingering neuropathic symptoms that are due to partial nerve root injury and that require long term medical therapy, was not considered.
- The psychological price that a patient pays when left with chronic pain was not entertained.
- The economic cost was not brought up at all; in fact, we know that the various accepted modalities of conservative therapy – injections, chiropractic care, physical therapy and rehabilitation - cost a lot more than surgery. Not to say anything about "alternative" therapies.

When I lived in Syria, I read everything that described life in the United States. OK, I admit that "Les Selections du Readers' Digest" was in French. But it was actually American with a French twist. One of my favorite sayings in that publication was about Bikinis and Statistics: they are similar - they show an awful lot but what they hide maybe more important!

In this instance, the SPORT study did not only use statistics to reach a conclusion that was not proven, but it insulted the intelligence of anyone who is actually willing to read it. Unfortunately, most people, our patients are no exception, accept popular, digested and sanitized reports as they are presented, without any question or the least of critical thinking. Consequently, our parent organizations should simply state the fact that this is a flawed study that does not lend itself to credible conclusions!

I guess I am a hopelessly old fashioned surgeon: I hope that when I develop a disc rupture, my surgeon will rely on his/her own clinical judgment when it comes to selecting the best course for me, rather than allowing a bunch of managers who in turn are relying on a flawed report, to dictate to him/her and me what to do!

I am afraid that with a National Leadership that issues such a weak report ... I won't be holding my breath! ❖

Executive Office Report, *Janine Tash*

Board Meeting The CANS Board of Directors will meet at LAX on Saturday, May 5. Contact me by April 20 if you have an issue/question you would like to have placed on the agenda for discussion or resolution by the Board.

Annual Meeting in Disneyland! It is never too early to make plans to attend the next CANS Annual Meeting. To increase attendance, CANS is planning a weekend that your entire family can enjoy. For the first time, we will meet in Disneyland **January 18-20, 2008** which is the Martin Luther King holiday weekend. So you can stay over and enjoy Disneyland and relax at the Grand Californian Hotel where our contracted group rate is \$213.00 (regular rack rate is about 40% higher). Disney's unique Grand Californian Hotel was designed as a tribute to the Arts and Crafts movement of the late 19th and early 20th centuries and is considered by some to be an architectural triumph that is a true testament to Disney's creativity and vision. We hope you will reserve this weekend now.

Please contact me at janinetash@sbcglobal.net with your input on any of the above items. ❖

CSNS Resolutions to be Considered

Randall W. Smith, M.D.

Fifteen resolutions have been submitted to the Council of State Neurosurgical Societies (CSNS) for consideration at their next meeting on April 13-14 in Washington, DC. A brief summary of each follows. If a CANS member wishes to give some input, E-mail Pat Wade, CANS president and head of the California CSNS delegates (pjw7@earthlink.net).

Resolution I – Wants the skills necessary to cover the ED defined, incorporated into training programs and CME.

Resolution II – Wants the resident 80-hour work week embraced as adequate for 4-5 year training programs without the need for fellowships.

Resolutions III, IX – Want the AANS to report member disciplinary actions to state medical boards and require disciplined members to perform special ethics and medical testimony CME before reinstatement.

Resolution IV – Wants an evaluation of training programs to discern whether the apprenticeship model generally used is due for change to better meet the needs of trainees, patients and society.

Resolution V – Wants the AANS/CNS to create a “health grades” site with accurate information to counter proprietary grading sites like WebMD and others which often contain erroneous information.

Resolution VI – Wants the AANS/CNS/AMA to campaign for passage of national legislation to legalize collective bargaining by groups of physicians.

Resolutions VII, X, XI – Want to oppose the feds pay for performance and public reporting initiatives.

Resolution VIII – Wants the AANS/CNS to create national determination of brain death guidelines.

Resolution XII – Wants AANS/CNS to create a voluntary outcomes registry for neurosurgeons to contribute to and access for personal use such as practice improvement and justification for surgical recommendations.

Resolution XIII – Wants AANS/CNS to work with the RRC and the ABNS to create a curriculum and certificate in critical care for neurosurgeons so as to qualify as “intensivists” in the ICU.

Resolution XIV - Wants AANS/CNS to classify their CME credits denoting such areas as “pain,” and “trauma,” among others, as well as offering seminars in those topics to assist in satisfying various state medical board CME rules.

Resolution XV – Wants the AANS/CNS to work with the AMA and imaging software manufacturers to create a digital image viewing program allowing any reader to view the images.

Questions or comments can be sent to the editor, Randall W. Smith, M.D., at rws-avopro@sbcglobal.net or to the CANS office at janinetash@sbcglobal.net. Past issues of the monthly newsletter are available on the CANS website at www.cans1.org.

The newsletter is a mix of fact, rumor and opinion. The facts are hopefully clearly stated. The rest is open to interpretation. The opinion is mine. R.S. The assistance of Janine Tash and Patrick Wade, M.D. in the preparation of this newsletter is acknowledged and appreciated. If you do not wish to receive this newsletter in the future, please E-mail or fax Janine Tash janinetash@sbcglobal.net, (916-457-8202) with the word “unsubscribe” in the subject line.

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