



Medicolegal aspects of epidural steroid injections

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Breach of duty;
Causation;
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Complication;
Damages;
Duty

OBJECTIVES The clinical use of epidural steroid injection and related legal claims have increased over time. Practitioners in the field of Pain Medicine must be aware of their ethical and legal responsibilities to their patients. Physicians must also be cognizant of how their own behavior may be a liability.

METHODS We performed a literature search using the PubMed and American Society of Anesthesiologists database for articles and guidelines related to epidural steroid injections and/or chronic pain. Further information was obtained via the LexisNexis database, including legal cases in which complications resulting from an epidural steroid injection had formed the basis of a medical malpractice action. The legal duties of physicians, as set forth in United States law, were also reviewed.

CONCLUSIONS Legal claims are filed against people who do everything correctly and those who do not—their outcome does not necessarily reflect justice. The practice of medicine is an art, which combines knowledge, technical skill, and interpersonal relations. Physicians must take a leading role not only in the medical care of their patients, but as educators in the legal arena. Where physicians fail to do so, others who lack medical training and an appreciation of the subtleties of the art will, of necessity, dictate the standards of medical care.

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Reviewing the topic of epidural steroid injection (ESI) from the perspective of the law can be foreign to many physicians, even those who have had the unfortunate experience of becoming a plaintiff in a malpractice lawsuit. The experience of litigation is often so overwhelming and negative that a clear understanding of the process, the way in which the law conceives the physician–patient relationship, and how they relate to this very commonly performed procedure (ESI) is often lost on the doctor. Worse, the exaggerated effect of the fear of litigation clearly alters medical practice in the United States. This is only one feature of the great impact that litigation has on our society (both economic and social) and the sense, for the plaintiff, of being out of control in a situation with no predictable outcome.

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For most people outside the legal field, doctors included, the concept of such litigation as *United States v. Satan and His Staff* (54 F.R.D. 282, W.D. Pa., 1971; self-explanatory), and *Pearson v. Chung, et al.* (Opinion of the Court, No. 07-CV-872, District of Columbia Court of Appeals, December 18, 2008; in which an administrative law judge from Washington, D.C. sued his dry cleaner for \$65,000,000 for losing his pants) strains the imagination and may contribute to the irrational effect of litigation on our practice. Our intention then is not to describe the development of good medical practice in the performance of epidural steroid injection, or to analyze the effect of relevant governmental regulations, but rather to describe some of the ways in which the American legal system has shaped the practice of pain management.

The use of ESI has grown dramatically over time with more than 400,000 payment claims placed to Medicare alone by anesthesiologists in 1999.¹ Between 1994 and

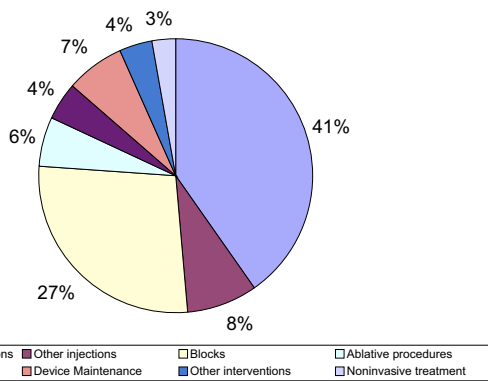


Figure 1 Distribution of Chronic Pain Management Claims based on events occurring between 1970 and 1999 and collected through December of 2000 by Closed Claims Project.

2001, there was an estimated 271% increase in lumbar ESI among the Medicare population over 65 years of age.² The increase in ESI has been accompanied by an increase in malpractice claims.

In 2004, the American Society of Anesthesiologists (ASA) Closed Claims Project reviewed closed malpractice insurance claims files of over 35 professional liability companies throughout the United States.³ Their goal was to define the issues in chronic pain management liability for anesthesiologists. One of their findings was that cases involving ESI accounted for 40% of all chronic pain management claims. More recent data gathered by the ASA Closed Claims Project database, although not specifically focused on the ESI, demonstrate a decrease in chronic pain management claims resulting in payment from 54% in 1985-1994 to 40% in 1995-2004.⁴ This decrease is, however, tempered by an increase in median award amounts from \$52K in 1985-1994 to \$153K in 1995-2004.⁴

In this article, we review the findings of the ASA Closed Claims Project as pertaining to ESIs and present the medicolegal principles invoked in this treatment. We will also outline the tort doctrine of medical malpractice with illustration of its application through the presentation of legal decisions involving ESI.

Methods

In April and May of 2009, we gathered the most recent data published by the ASA and available on their Web site, which pertained to ESIs, including the ASA Closed Claims Project. Searches were also conducted on PubMed and using the Google search engine for articles, book chapters, and published papers on the topic of ESIs and medical malpractice. During the same time period, we also conducted searches of federal and state cases using LexisNexis and the search terms “(epidural /p steroid /p inject!) & malpractice”. We excluded all cases that involved prisoners and all cases in which the ESI was not the focus of the lawsuit. Finally,

we reviewed a standard reference of United States law, the Corpus Juris Secundum, Physicians and Surgeons section, for cases involving epidural injection and medical malpractice.

ASA Closed Claims Project

Since 1985, the ASA Closed Claims Project has gathered data from closed insurance claims filed against anesthesiologists. Their goal has been to identify problems in the field of anesthesia and to devise strategies to improve patient care.

The Closed Claims Project analyzed the closed claims files of over 35 professional liability companies in the United States. The claims analyzed related to events that occurred between 1970 and 1999 and were collected through December of 2000. The number of closed chronic pain management claims totaled 284, with 114 (41%) claims being related to ESI (Figure 1).

Of the claims made following ESI, the most common allegations were nerve injury, infection, and headache (Figure 2).

There were 28 nerve injury claims related to ESI ranging from spinal cord injuries to individual nerve root injuries. Of the nerve injury claims, 14 were spinal cord injuries, including 6 resulting in paraplegia, 1 in quadriplegia, and 2 of these cases involved hematomas due to patients using anticoagulants.

Most of the infection claims brought against chronic pain management specialists were also allegedly due to ESI. These included 12 cases of meningitis, 7 cases of epidural abscesses (2 of which required surgical drainage), and 3 instances of osteomyelitis.

Of particular note to the Closed Claims Project was the observation that most of the claims brought involved the use of opiates or local anesthetic in the ESI (61%). Moreover, the most serious complication, death or brain damage, only occurred where opiates and/or local anesthetics were used. Of the nine cases resulting in death or brain damage, six involved the use of local anesthetics. Five of these were due

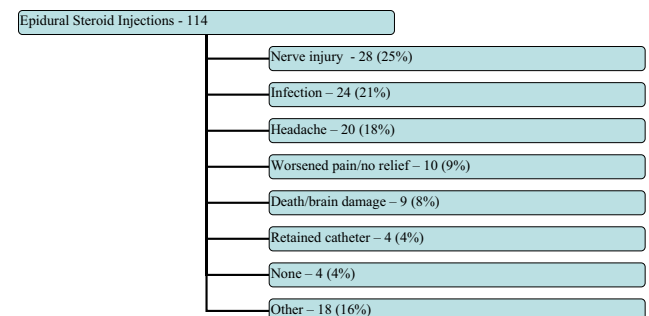


Figure 2 Percentage occurrence of alleged injuries stemming from ESIs based on events occurring between 1970 and 1999 and collected through December of 2000 by The Closed Claims Project.

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