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Editorial

The AANS suspends Editor-in-Chief, Nancy Epstein, for telling the truth about spine surgery

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Those who are members of the AANS may have read that the AANS suspended Nancy Epstein for 6 months for a violation of the AANS Code of Ethics for (1)…"not identifying or otherwise qualifying her testimony as personal opinion," and (2)…"nor did her testimony correctly represent the full standard of care"…. (Quotations are from the recent AANS President's letter to the membership-[not dated]).

This grievance against Nancy was brought to the AANS by a neurosurgeon (identified as Senior Neurosurgeon [SN]) who was a defendant in a malpractice case in which Nancy testified as an expert for the plaintiff. The case involved a 65-year-old patient with multiple comorbidities and with mild-to-moderate L4-5 spinal stenosis and root compression, 1 mm of spondylolisthesis with no motion on dynamic images, and failure of medical management for radiculopathy. The procedure chosen was a minimally invasive transforaminal lumbar interbody fusion (TLIF) procedure with pedicle screw fixation for minimal Grade I spondylolisthesis with lateral recess stenosis. The patient who had a 4+/5 strength in her dorsiflexion of her right foot with a radiculopathy preoperatively sustained a foot drop as a result of the operation due to a stretch injury by the admission of the operating surgeons.

I have read the court trial documents of the malpractice case, involving the SN whose case was decided in his favor by the local jury. I have read all of the testimonies presented to the AANS including the above and the lawyers' documents, Nancy's responses, and all the appendix documents and additional material in this case.

In my opinion, on multiple occasions in the public trial and in the AANS records, Nancy repeatedly stated that there are a number of surgical approaches that could have been used in the patient among which are laminectomy, laminectomy and bony fusion, laminectomy and instrumented fusion, or a TLIF procedure. She stated that she would have personally performed a decompressive laminectomy in this case. She did not think that a TLIF operation was indicated in this case nor was a fusion; however, she recognized that it could be done by other neurosurgeons. Although she knows how to do a TLIF procedure, she does not use it as she believes that there are preferable lower risk alternatives. Her review of the literature presented to the AANS and published in SNI[2] indicated that the TLIF procedure has higher complications than a laminectomy. In her opinion, the use of this procedure in this patient was below the standard of care (and was not what most neurosurgeons would have done in this case). Repeatedly, in her examination by members of the AANS Professional Conduct Committee (PCC), the questions she was asked were about her views in general on the use

of the TLIF operation and were not addressed solely to this particular case. Multiple times she responded that TLIF is a procedure she does not use but that is performed by neurosurgeons around the country. The reason for the grievance presented for her alleged Violation of the Code of Ethics was for her comments given in regard to this specific case and not, as the members of the PCC questioned her, a critique of what is practiced generally or the TLIF procedure itself.

Not stated in any of the AANS responses were the facts that the SN asked his associate to do the operation. The associate had never seen or examined the patient before surgery. The associate neurosurgeon told the patient the day after surgery that this complication should "never have happened." Both neurosurgeons billed Medicare as cosurgeons, a practice described by the SN as "uniformly done in all practices" although it is not appropriate. Furthermore, the SN stated that he was only the assistant in the surgery. In addition, one of the members of the PCC admitted, in his examining questions of Nancy, that he, personally, may "meet his patients with his co-orthopedic surgeon for the first time on the morning of surgery" but does not consider that malpractice. The patient who was interviewed with her sister by the AANS PCC was brought to tears by the members of the PCC. By not commenting on these above-mentioned behaviors of neurosurgeons, the AANS, which, as an organization, represents all of its member neurosurgeons, thus, sanctioned the conduct of these neurosurgeons. While Nancy was criticized for her actions, no such criticism was ever made by the AANS in regard to the behavior of the SN and PCC neurosurgeons. During all of these contentious hearings and in the President's letter to the membership, it appeared to me that information presented by Nancy was repeatedly taken out of context and misrepresented. It also seemed to me that her testimony was taken as a personal threat to the members and the defendant neurosurgeon (SN) in the above case about their spinal practices. The fact that members did not agree with her literature-supported conclusions does not make her conduct unethical.

Nancy has written about the use of inappropriate spine surgery in a 2011 paper in SNI.[3] Her study "combined a search of the literature with a review of several personal series to specifically assess the indications, comorbidities, outcomes, and complications for patients 65 years of age or older undergoing spinal surgery. Specific attention was additionally paid to comorbid factors which increased the susceptibility of these geriatric patients to increased morbidity or mortality following "unnecessary," too much (instrumented fusions), or too little (MIS-minimally invasive surgery) spine surgery." She stated that "in the literature, the frequency of spine operations, particularly instrumented fusions, has markedly increased in patients of age 65 and older. Specifically, a 28-fold increase in anterior discectomy and fusion was observed for geriatric patients. Geriatric patients with more comorbid factors, including diabetes, hypertension, coronary artery disease (prior procedures), depression, and obesity, experience higher postoperative complication rates and costs. Sometimes "unnecessary," too much (instrumented fusions), and too little (MIS spine) surgeries were offered to geriatric patients, which increased the morbidity." Her studies are based on facts. Nancy has always written objectively about spine surgery, and some of her conclusions may not be pleasing to the community of spine surgeons. Sanctioning Nancy Epstein because she disagrees with what is being done in the above case or in spine surgery, in general, will not solve this problem. Actions by the AANS and other organizations should protect our patients from overuse of spinal surgery.

However, there is a deeper meaning to explain the behavior of the neurosurgeons of the AANS. In 2014 in an SNI paper,[4] Watts described the shift of the AANS from a charitable organization, (501 C3) by tax designation, to a trade group (501 C6) which took place in 2003. Whereas a charity has its primary concern for the benefit of the patient, the trade organization places it primary interest on what is best for its members and their businesses. Sixteen years after the AANS changed is mission from an educational to a business organization, the negative effects of these organizational changes by the AANS on the conduct of its neurosurgeon members are being seen. The result is that the neurosurgeon and biomedical industry come first and the patient comes last. Ausman[1] and Watts[4] predicted that this unfavorable behavior change would occur.

SNI, which is now part of a 501 C3 charitable foundation, has always reported what is the truth and is open to all sides of a debate, the basis of a scholarly mission. SNI stands for the patient first. Nancy has exemplified these principles in her papers and editorials in regard to spinal surgery. She does her research diligently and reports all sides of the evidence in regard to a subject. Just read her papers for proof. In addition, she adds her experience as a spine surgeon having practiced as a neurosurgeon for almost 40 years, doing spine surgery exclusively for 25 years. Her personal experience is in the 1000's of cases of many types. She has written over 300 articles on spine surgery, more than most spine neurosurgeons in the world. What the AANS should be asking Nancy is: "What do you do to achieve such low complication rates and excellent outcomes in your work so that we all may learn from your experience?" rather than pursue this antagonistic approach to an experienced spine neurosurgeon in an attempt to intimidate her into silence. How can we do better and not reject the success of those who have a different opinion?

I do not support the action of the AANS against Nancy Epstein to suspend her for her comments which were truthful and supported by facts. Nancy will continue to express her well-reasoned and thoughtful opinions for the benefit of neurosurgeons and our patients. Although it is probably too late, the AANS should evaluate the effects of its change in mission from one concerned about the patient first to that of the neurosurgeon, first. As I was once told, "If the doctor is concerned about the patient, he/she will never have to worry about having patients or money; if a doctor is concerned about money, he/she will lose both."

SNI welcomes any comments in response to this paper and will publish them all for our readers to see and to make their own judgments.

This editorial expressed my opinion and is not taken as representative of SNI journal policy or the Editorial Board Members opinions.

Declaration of patient consent

The authors certify that they have obtained all appropriate patient consent forms. In the form, the patient has given his consent for his images and other clinical information to be reported in the journal. The patients understand that their names and initials will not be published and due efforts will be made to conceal their identity, but anonymity cannot be guaranteed.

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