All Things Legal
Perianesthesia Nursing

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Objectives
- Identify common areas of perianesthesia nursing negligence and liability
- List methods to prevent liability in the perianesthesia practice setting

Standard of Care
- Legally, nurses are held accountable to deliver care in a manner that any prudent nurse would render in the same or similar circumstances.
- Follow the nursing process
  - Assessment, diagnosis, planning, implementation, evaluation

Negligence Law
- Negligence
- Malpractice (Professional Negligence)
- Tort Law

Elements of Malpractice or Negligence
- Duty
- Breach of duty
- Foreseeability
- Causation
- Injury
- Damages

Definition
- Liability: legal responsibility for acts or failure to act according to standards, results in another person’s harm
- Common causes of nursing liability
Employer Liability

- **Respondent Superior**
  - Employer responsible for actions of employee
- **Corporate liability**
  - Facility has responsibility to consumers to ensure clinical staff is adequately trained

- **Res Ipsa Loquitur: “the thing speaks for itself”**
  - A rule of evidence that allows supposition of negligence on the part of the defendant

Intentional Torts

- **Assault**
- **Battery**
- **False imprisonment**

Quasi-intentional Torts

- **Invasion of privacy**
- **Defamation**

Personal Accountability

- **Nurse Practice Act**
- **National standards**
- **Education**
- **Policies and procedures**

Nurses Are Named in Malpractice Cases

- Required to delegate duties
- Patients are discharged from the hospital earlier
- Nursing shortages are well publicized
- Healthcare technology advances
- Practicing with increased autonomy & responsibility
- Consumers are better informed on their conditions & what to expect from caregivers
## Prevention of Liability

- Adequate training
- Follow standards, procedures
- Proper use of equipment
- Documentation
- Communication
- Medication administration/treatment
- Maintenance of privacy

## Issues Of Consent

- Types of Consent
  - General, implied, informed
- Competency Issues – capacity
- Treatment Without Consent
- Elements of consent
- Nurses Role in Informed Consent

## Patient Confidentiality

- Elements of patient confidentiality
  - HIPAA (Health Insurance Portability and Accountability Act of 1996) is legislation that provides data privacy and security provisions for safeguarding medical information.
- Legal and ethical standards
- Importance of patient confidentiality

## Advance Directives

- Living Will
- Natural Death Act
- Durable Power of Attorney for Health Care
- Patient Self Determination Act (PSDA)
- Do-Not-Attempt-Resuscitate Directives

## Documentation

- Purposes
  - Legal document required by state laws & regulations
  - Means of communication to ensure continuity of care
  - For education and research
  - Substantiate insurance reimbursement claims
  - Evidence in legal proceedings to establish whether or not care rendered met the legal standard of care
- Electronic vs. paper?
- The Electronic Health Record (EHR)
  - Advantages: legible, available across settings, standardization, minimize risk of lost information, improve medication safety, audit trails
  - Disadvantages: real time or documented time, downtime risk, rote clicking/data input, copy/paste risks, hybrid records, patient/data association errors, expensive
## Top Issues in EHRs

- Incorrect information – 20% of cases
- Hybrid health records/EHR conversion issues – 16%
- Systems failure – electronic routing of data – 12%
- Pre-populating/copy and paste – 10%
- Failure of system design to meet the need – 9%
- EHR (user) training and/or education – 7%
- Lack of integration/incompatible systems – 7%
- EHR-related user error (other than data entry) – 7%

## Documentation Tips

- Know rules/regulations related to privileged data, confidentiality, disclosure
- Know HIPAA requirements concerning privacy, confidentiality, security of medical information
- Enter information on the correct patient record!
- Be mindful of need to communicate with patients while entering data into record – don’t ignore the patient!
- Know the risks associated with copy and pasting information!

## Other Issues/Risks

- Patient safety events (incident reports)
  - Document the event objectively in the patient record
  - Complete the safety report per institutional requirements
- Phone calls
  - Document calls per EHR/institutional requirements
- Verbal orders
  - If allowed, follow institutional requirements

## Major Issues That Result in Charges Against Nurses

- Failure to follow standards of care
  - Failure to completely assess patients, adhere to standardized protocols or policies, or follow prescribers’ orders, both written & oral

## Patient Relations

- Never underestimate the value of patient relations/clinical risk staff!
- Communication is key
| • Failure to use equipment in a responsible manner  
  – Failure to follow manufacturer’s recommendations for operating the equipment, to check the safety of equipment prior to using it, or learning how to use the equipment properly | • Failure to communicate  
  – Failure to notify a physician in a timely manner, listening to what the patient is really saying and responding appropriately, ineffective communication, or failure to seek higher medical authorization for a treatment |
|---|---|
| • Failure to document  
  – Failure to note in patients’ medical records their progress and response to treatments, injuries, pertinent nursing assessments, and orders or information received in telephone conversation | • Failure to assess and monitor  
  – Failure to complete assigned tasks on your shift, implementation of plans of care, observation of patients’ ongoing progress, and interpretation of patients’ signs & symptoms |
| • Failure to act as the patients’ advocate  
  – Failure to questions discharge orders if the condition of the patient requires it, to question incomplete or illegible orders, or to provide a safe environment for your patient | Social Media  
  • Use of phones, other devices in patient care areas  
  • Sharing information – risks of FaceBook, Instagram, Twitter, etc.  
  • Consider your practice – protecting you and your patients! |
The Legal Process

Phases of Litigation

- Pretrial preparation
- Procedural process
  - Prelitigation Panels
- Process

Depositions

- Practical Tips for Depositions
  - Be PREPARED!
  - Review relevant hospital records
  - Educational background, professional experience, specific job duties
  - Under oath, be truthful even if damaging
  - Don’t guess, get facts straight
  - Answer only what you know
  - Be careful with remarks “off the record”
  - Appearance, articulate
  - Review, sign transcript

Nurse As Expert Witness

- Requirements
  - Clinical practice in the setting
- Responsibilities
  - Review and comment on the case
- So what does the expert do?
  - Read case documents, form opinion, comment to attorney, be deposed, attend proceedings
- Why serve as expert?
  - Learning experience, support colleagues, extra income

Professional Liability Insurance

- Types
  - Occurrence
  - Claims made
- Do you need liability insurance?

TIPS TO REDUCE YOUR LIABILITY AS A PERIANESTHESIA NURSE
Document nursing care
Audit your nursing records

Communicate with caregivers
Show kindness and respect

Monitor the patient appropriately
Delegate patient care wisely

Follow the chain of command with problems
Defend the patient!

Know policies and procedures and follow them
Stay current!

Respond quickly to emergencies
Use common sense - go with your gut!

What’s best for the patient (and you)?

References