Medical Malpractice and the CRNA – Focus on Patient Safety

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What is Medical Malpractice?

- A breach of the duty which arises out of the relationship between a healthcare provider and a patient
- Covers a variety of causes, including
  - Breach of contract
  - Intentional torts
  - Negligence
Why is there access to courts for medical malpractice claims?

- Compensation to a patient for an injury
  - Civil claims
  - Criminal claims
  - Role of insurance
- Deterrence
  - “Quality Assurance?”
What must be shown?

- Legal Duty
- Injury – and Causation directly related to the care provided
- Breach in the Standard of Care
- Damages
What must be shown?

- Establish a “legal duty”
  - Contractual relationship
    - Express or implied contract
    - Good Samaritan exception
  - Scope of Duty
    - Treat in accordance with the standards of acceptable practice
    - Continue until the natural termination of the relationship
Types of Claims

- Breach of Contract
- Breach of Warranty
- Intentional Tort
  - Assault and Battery
  - Defamation
  - False Imprisonment
  - Invasion of Privacy and Wrongful Disclosure of Confidential Information
  - Misrepresentation
  - Outrage (intentional infliction of emotional distress)
  - Violation of Civil Rights
Professional Negligence

Standard of Care
- “The Reasonable Physician”
- Local, State or National Standard
- “School rule”
  - Especially important regarding non-physician providers
    - Areas of Expertise/Competence
    - Requirement for referral
- Standard of Reasonable Prudence
Proving the Standard of Care/Breach of the Standard

- **Expert Testimony**
  - Experienced and Knowledgeable about the Standard of Care
  - National vs. Local Experts/Standards
  - Professional Qualifications

- **Negligence Per Se/Statutory Liability**

- **Common Knowledge Doctrine**
  - Wrong site Surgery
Standard of Care/ Breaches

- **Res Ipsa Loquitor**
  - Incident would not have occurred without someone’s negligence
  - Defendant had control of the apparent cause
  - Plaintiff could not have contributed to cause

- **Strict Liability**

- **Causation and Damages**

- “Loss of a Chance”
Determination of Damages

- Actual or Compensatory Damages
  - Economic loss
    - Medical and Rehabilitation Treatments
    - Loss of earnings
  - Non-economic Loss
    - Pain and Suffering

- Punitive Damages
  - Usually awarded only in egregious cases
PATIENT SAFETY

MORE THAN MEETS THE EYE
Basis for Claims

- Inadequate informed consent
- Poor record keeping
  - Mismanaged airway
- Inattention to details
  - Violation of standards
- Cover ups
Highlight of Standards

- PS Classification
- Airway Assessment
- Anesthetic History
- Allergies
- Fasting Status
- History and Physical
- Physical Facility
- Risk Infection

- PNS
- Ventilation
- Oxygenation
- Record Keeping
- Qualified Provider
- Informed Consent
- Monitors
- Equipment
Perform a thorough and complete preanesthesia assessment
- ASA Classification
- Airway Assessment
- Anesthetic History
- Allergies
- Fasting Status
- History and Physical
Standard 2

- Obtain informed consent for the planned anesthetic intervention from the patient or legal guardian.
Standard 3

- Formulate a patient-specific plan for anesthesia care.
Standard 4

- Implement and adjust the anesthesia care plan based on the patient’s physiological response.
Standard 5

Monitor the patient’s physiological condition as appropriate for the type of anesthesia and specific patient needs.

- Ventilation cont.
- Oxygenation cont.
- CV Status cont.
- Body temperature cont.
- Neuromuscular function
- Patient position
Standard 6

- There shall be complete, accurate and timely documentation of pertinent information on the patient’s medical record.
  - Informed consent
  - Pre and Post Anesthetic evaluations
  - Anesthesia record - monitors, drugs, wastage
  - Discharge and follow-up
Standard 7

- Transfer the responsibility for care of the patient to other qualified providers in a manner which assures continuity of care and patient safety.
Standard 8

- Adhere to appropriate safety precautions, as established within the institution, to minimize the risks of fire, explosion, electrical shock and equipment malfunction. Document checking: the patient’s medical record, anesthesia machine, equipment.
Standard 9

- Precautions shall be taken to minimize the risk of infection to the patient, CRNA and other providers.
Needle or Syringe Reuse: Applications

- Same patient: 35%
- IV tubing: 8%
- Emergencies: 2%
- IM/SubQ injections: 2%
- Different patients: 1%
- Do not reuse: 63%
Standard 10

- Anesthesia care shall be assessed to assure its quality and contribution to positive patient outcomes.
Standard 11

The CRNA shall respect and maintain the basic rights of patients.

AANA Code of Ethics
Most Frequent Non-Compliant Guideline Groups

- **Preanesthesia Assessment**: 59%
- **Anesthesia Administration**: 19%
- **Recovery**: 9%
- **ER & Airway**: 7%
- **Difficult Airway**: 5%

St. Paul 2002
CRNA Payout for CRNA Claims
Appropriate Care versus Inappropriate Care

AANA Foundation, 2003
“Following orders” does not shield CRNAs from liability.
Follow the Standards

1. Read, know, and understand the Standards.
2. Incorporate the standards into your practice.
3. Monitor your practice to assure that you are meeting the standards.
Most Frequently Reported Claims

Type of Claim

- Teeth
- Adverse
- Baby
- Death
- C. Arrest
- Pt. Monitor
- Oxy/Hypoxia
- Equipment
- Nerve
- Intub/Throat

St. Paul, 2000
Most Costly Claims

<table>
<thead>
<tr>
<th>Type of Claim</th>
<th>Average Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>C. Arrest</td>
<td>250,000</td>
</tr>
<tr>
<td>Aspiration</td>
<td>200,000</td>
</tr>
<tr>
<td>Adverse</td>
<td>150,000</td>
</tr>
<tr>
<td>Oxy/Hypoxia</td>
<td>100,000</td>
</tr>
<tr>
<td>Pt. Monitor</td>
<td>50,000</td>
</tr>
<tr>
<td>Eye</td>
<td>0</td>
</tr>
<tr>
<td>Baby</td>
<td>0</td>
</tr>
<tr>
<td>Cardiac</td>
<td>0</td>
</tr>
<tr>
<td>Arm/Shoulder</td>
<td>0</td>
</tr>
<tr>
<td>Int/Throat</td>
<td>0</td>
</tr>
</tbody>
</table>

St. Paul, 2000
Indemnity Payments
Loss Profile: 1995-1999

Cost of Claim in Financial Categories

% of Claims

0
10
20
30
40
50
60
70
80

0
1-1,000
1,001-5,000
5,001-10,000
10,001-25,000
25,001-50,000
50,001-100,000
100,001-200,000
200,001-500,000
500,000-1M

St. Paul, 2000
## Most Frequent Procedure Type Identified in Claims

<table>
<thead>
<tr>
<th>Most</th>
<th>Least</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001 Orthopedic</td>
<td>2003 General Surgery</td>
</tr>
<tr>
<td>2001 General Surgery</td>
<td>2003 Orthopedic</td>
</tr>
<tr>
<td>2001 Gynecologic</td>
<td>2003 Gynecologic</td>
</tr>
<tr>
<td>2001 Obstetrics</td>
<td>2003 Obstetrics</td>
</tr>
<tr>
<td>2001 ENT</td>
<td>2003 Plastics</td>
</tr>
<tr>
<td>2001 Ophthalmic</td>
<td>2003 ENT</td>
</tr>
</tbody>
</table>

## Most Frequent Claims Resulting in Death or Brain Injury

<table>
<thead>
<tr>
<th>Most</th>
<th>2001</th>
<th>2003</th>
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</thead>
<tbody>
<tr>
<td>ENT</td>
<td>ENT</td>
<td></td>
</tr>
<tr>
<td>Obstetrics</td>
<td>Obstetrics</td>
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</tr>
<tr>
<td>General Surgery</td>
<td>Gynecologic</td>
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<tr>
<td>Gynecologic</td>
<td></td>
<td>Orthopedic</td>
</tr>
<tr>
<td>Orthopedic</td>
<td>Orthopedic</td>
<td></td>
</tr>
<tr>
<td>Least</td>
<td></td>
<td>Plastics*</td>
</tr>
</tbody>
</table>

“Exhaustive research documents the fact that today, in America, there is no guarantee that any individual will receive high-quality care for any particular health problem. The health care industry is plagued with overutilization of health services, underutilization of services and errors in health care practice.”