Consents, Documentation and Other Legal Risks in the Perianesthesia Continuum

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Brief Risk Management History

- History
  - Comprehensive Medical Malpractice Reform Act – 1985
  - Medical Malpractice Law
    - FL Malpractice Statute (FS 766)
  - Legal Requirements of Internal Risk Management Program
    - FL Statute 395.59A
  - Healthcare Laws and Regulations:
    - Standards, Regulations, Guidelines, Policies
      - Professional – ANA, **ASPAN**, AACN, ENA, AORN, etc.
      - Regulatory – JC, HCFA, AHCA (FL), FDA, OSHA

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Standards of Care

- National Standards
  - ANA, ASPAN, AACN, AWHONN, AORN, ENA, etc.
- Community Standards
- Facility Policies and Procedures / Protocols
  - Especially related to Safety / Procedures, etc.
- Ordinary Prudent Practice
  - Expert Testimony (Experienced in that particular Nursing specialty)
- Internal / External Guidelines

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Risk Management Defined

The process of identifying, evaluating, and preventing loss to a facility, the employees, patients, visitors, or assets

- Loss Prevention – To reduce frequency
- Loss Reduction – To reduce severity
- Under FL Statute 395

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Loss Prevention

- Everyone is a Risk Manager
- Be Proactive and Preventive
- Be Familiar with Department & Hospital-Wide P&P's – Including Safety
- Know your Job Description (Scope of Practice)
- Know Your Nurse Practice Act
- Practice Safely & According to Hospital Protocols
- If in doubt, **ASK!** **(Asking Solicits Knowledge)**

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Review of Common Claims / Legal

- Negligence
  - Carelessness
  - Failure to act as an ordinary prudent person in the same or similar circumstances (degree of care)
  - Results in Harm
- 4 Elements of a Malpractice Lawsuit
  - Duty
  - Breach
  - Causation
  - Damages

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Review of Common Claims / Legal

- Omission
  - Inadvertently leave something undone, or not given, especially when there is a duty owed (to a patient), with no malicious intent
- Commission
  - Performing some act or treatment that results in harm to an individual – often with intent, or with improper knowledge or training

Many nurses falsely believe lawsuits result mainly from a wrong action; However, it is often lack of action (basic "expected" acts) that results in a lawsuit!

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Possible Malpractice Claims:

- Nursing Actions-that could predispose a Lawsuit:
  - Failure to follow Standards of Care
    - Failure to follow reasonable Orders and Protocols
  - Failure to use Equipment in a Responsible Manner
    - Failure to follow proper training
  - Failure to Communicate
  - Failure to Document (or Document appropriately)
  - Failure to Assess and Monitor
    - Failure to Interpret pt. data, including CHANGES in Condition
    - Failure to Question discharge orders, when inappropriate
  - Failure to Act as a Patient Advocate

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Review of Common Claims / Legal
More Specific to Specialty Area

- Types of Nursing Negligence
  - Failure to observe a patient as the doctor ordered (or per unit / level protocol)
  - Failure to obtain informed consent before a treatment or procedure
  - Failure to report a change in the patient's vital signs or status
  - Failing to provide for a patient's safety
  - Failing to provide the patient with appropriate teaching before discharge

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National Patient Safety Goals - 2022

1) **GOAL: Identify patients correctly.**
2) **GOAL: Improve staff communication.**
   a. **Get important test results to the right person on time.**
3) **GOAL: Use medicines safely.**
4) **GOAL: Use alarms safely.**
   a. To ensure that alarms on medical equipment are heard / responded to on time.
5) **GOAL: Prevent infection.**
6) **GOAL: Identify patient safety risks / suicide.**
7) **GOAL: Prevent mistakes in surgery.**

Each GOAL can have multiple components – it is up to each Facility to determine how to manage!

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The Nurses' Responsibilities in Perianesthesia Setting:

- Aid in the Prevention of Complications / Harm
  - **What Else??**
    - **Checking for expiration dates**
    - **Appropriate dressing applications / wound vacs**
    - **Appropriate monitoring – including using Alarms**
      - **Having Audible Alarms**
    - **Accurate report given using hand-off tools**
    - **Appropriate use of medications**

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The Nurses' Responsibilities:

Nursing is the protection, promotion, and optimization of health and abilities, prevention of illness and injury, alleviation of suffering through the diagnosis and treatment of human response, and advocacy in the care of individuals, families, communities and populations.

- ***ANA – Nursing Practice Definition***

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The Nurses' Responsibilities in Pre-/ Post-op Setting:

- **What is the Scope of ASPAN?**

The scope of perianesthesia nursing practice involves the cultural, developmental and age-specific assessment, diagnosis, intervention and evaluation of individuals within the perianesthesia continuum. Those individuals across the age continuum will have or have had sedation/analgesia and/or anesthesia for surgical, diagnostic and therapeutic procedures. Our practice is systematic, integrative and holistic, and involves critical thinking, clinical decision making and inquiry. ASPAN strives to promote an environment in which the perianesthesia nurse can deliver quality care among a diverse population within a multidisciplinary healthcare team.

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The Nurses' Responsibilities in Pre-/ Post-op Setting:

ASPAN's Core Purpose:
To empower and advance the unique specialty of perianesthesia nursing.

- **Core Values: C.A.R.E.S.**
  - **C**ourage
  - **A**dvocacy
  - **R**espect
  - **E**xcellence
  - **S**ervice

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The Nurses' Responsibilities in Pre-/ Post-op Setting:

- **What is the Scope of Practice?**
- **Preanesthesia Level of Care**
  - **Preadmission**
  - **Day of Surgery / Procedure**
- **Postanesthesia Levels of Care**
  - **Phase I**
  - **Phase II – Including Discharge**
  - **Extended Care**

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The Nurses' Responsibilities in Pre-/ Post-op Setting:

- **What are the Principles?**

I. Perianesthesia Standards for Ethical Practices

Perianesthesia Nurses Strive to Ensure:

a. Competency
b. Responsibility to Patients
c. Professional Responsibility
d. Collegiality
e. Research
f. Advocacy

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The Nurses' Responsibilities in Pre-/ Post-op Setting:

- **What are the Principles?**

II. Principles of Safe Perianesthesia Practice

Characteristics of a Safe Culture include:

a. Communication
b. Advocacy
c. Competency
d. Efficiency / Timeliness
e. Teamwork

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The Nurses' Responsibilities in Pre-/ Post-op Setting:

- **What are the Standards?**

I. Patient Rights
II. Environment of Care
III. Staffing and Personnel Management
IV. Quality Improvement
V. Research and Clinical Inquiry
VI. Nursing Process * (A.D.P.I.E.)

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The Nurses' Responsibilities in Perianesthesia Setting:

- Aid in the Prevention of Errors / Patient Safety
  - Appropriate Assessment and Management of the Perianesthesia Patient throughout **all** Phases
    - This includes appropriate Documentation of Same*
  - Normothermia
  - Pain and Comfort
  - Management of Post-op Nausea & Vomiting (PONV)
  - Management of Postdischarge Nausea & Vomiting (PDNV)
  - Unintentional Injuries / Harm

What would a Prudent Nurse do??

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The Nurses' Responsibilities in Perianesthesia Setting:

- Aid in the Prevention of Errors / Patient Safety
- Appropriate Assessment – What does that Mean?
  - Respiratory Status: rate and effort
  - Level of Consciousness
  - Vital Signs
    - SPO2, EtCO2, Monitor – heart rhythm, hemodynamics
  - Allergies
  - Pain and Comfort
  - Return of Reflexes / Neuro Function (*Motor / Sensory)
  - I & O
  - Medication Management
  - Surgical Wound / Site / Drainage

What would a Prudent Nurse do??

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Review of Common Claims:

- Nursing Monitoring / Documentation **Must** be:
  - Complete
  - Accurate
  - Timely
  - Objective
  - Chronological
  - Clinical
  - Response to Interventions

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Review of Common Claims / Legal

- Critical Thinking – Critical Thinkers in Nursing Must practice the cognitive skills of analyzing standards, discriminating facts (= data), seeking information, reasoning logically, and predicting and transforming knowledge - All this while using Effective Communication techniques, to make others aware, as appropriate!

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The Nurses' Responsibilities in Perianesthesia Setting:

- ✓ Pre-Op / Pre-admit Setting / Readiness
  - ✓ Preadmission Assessment
  - ✓ Health History
  - ✓ Physical Assessment
  - ✓ Testing / Results
  - ✓ Patient Preferences
  - ✓ Psycho-social
  - ✓ Discharge Planning
  - ✓ Pre-op teaching
  - ✓ Documentation / Communication

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The Nurses' Responsibilities in Perianesthesia Setting:

- ✓ Pre-Op Setting - Teaching

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The Nurses' Responsibilities in Perianesthesia Setting:

- ✓ Pre-Op Setting / Readiness – Informed Consent
- ✓ What is it Exactly?
  - ✓ In all 50 States it must include Explanation of: Risks, Benefits & Alternatives
  - ✓ Ethical Obligation
  - ✓ Legal Requirement
- ✓ What is the Nurse's Role?
  - ✓ To witness the patient's signature
  - ✓ Can give simple clarifications

(*Person performing procedure is legally responsible*)

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The Nurses' Responsibilities in Perianesthesia Setting:

- ✓ Pre-Op Setting / Readiness-Informed Consent
- ✓ Basic Elements of a Consent:
  - ✓ Patient must know he has a role in making decision
  - ✓ Discussion of risks, benefits and alternatives
    - ✓ Discussion of Pros and Cons of each
  - ✓ Discussion of any medical uncertainty
  - ✓ Assessment of patient's understanding of the treatment plan
  - ✓ Exploration of patient preference
  - ✓ No Coercion
  - ✓ Must respect patient Autonomy

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The Nurses' Responsibilities in Perianesthesia Setting:

- ✓ Pre-Op Setting / Readiness – Informed Consent

- ✓ **Special Considerations:**
  - ✓ Consent from a Sedated Patient **
  - ✓ Incapacitated vs. Incompetent
  - ✓ Consent for Minors

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Consent Mishaps

#6009

CONSENT TO SURGERY/PROCEDURE

PLEASE READ THIS FORM CAREFULLY AND COMPLETELY BEFORE SIGNING

.ist Doctor(s) and assistants doing the important parts of the procedure: Dr. [redacted] - Doing Surgery

will allow my doctor(s) to do: Right VATS, Possible Wedge Resection, Possible talc Pleurodesis

(Name of Procedure)

on [redacted]

(Patient's Name)

Some of these doctors or assistants may have to be changed. I agree to these changes. I will allow assistants to help my doctor. Assistants may be surgical residents. There may be medical assistants employed by Memorial Healthcare System.

No one has promised that I will get a good result from this procedure. My doctor has told me the possible good results and bad results of this procedure. My doctor has told me about other things that may be done instead of this procedure. My doctor has told me about what will probably happen to me without this procedure. My doctor will answer any questions I might have.

☐ **Please place a check mark here if there is additional written information attached to this**

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Consent Mishaps

Blood is not a product. It is a service. No one can promise that I will get good results from blood from another person given to me.

There may be people present during the procedure who need to be there. These people might include students or equipment technicians or technical assistants or others. My doctors and Memorial Healthcare System will decide when other people need to be present.

I will allow photographs, films, video, and/or audio recording of this procedure. This will happen only when approved by my doctor and Memorial Healthcare System. I will allow these records to be used for scientific or educational purposes if all identifying information is removed. Records used only for scientific or educational purposes may or may not become part of my medical record.

Memorial Healthcare System may dispose of any tissue or parts which may be removed.

I also give permission to my doctor, or assistants, to do any other procedures or treatment needed to keep me healthy.

I have read this form. I understand this form. All my questions were answered. All blanks were filled in. I crossed out any sections that did not apply before I signed.

I GIVE MY CONSENT TO HAVE THE ABOVE PROCEDURE PERFORMED.

Signature of Patient: [redacted] Witness

Date: 10-13-12 Time: 7:01

FOR PATIENTS UNABLE TO SIGN:

Signature of Patient's Legal Representative Witness

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Consent Mishaps – Part 1

DATE	TIME	ORDERS AND SIGNATURE • USE BALL POINT PEN	REQUEST SENT ✓	REQUEST SENT TIME	NURSE'S SIGNATURE	DANGEROUS ABBREVIATIONS
		Please check the appropriate box: ☐ OBSERVATION STATUS ☐ FULL INPATIENT ADMISSION				DO NOT USE! → DO NOT USE!
		ALLERGIES:				U IU → UNITS
1/24/13	1057	- NPO NOW - OR FOLLOWING MRI				QD → DAILY
		- MRI (R) FOOT - 2ND REQUEST STAT NEED PRIOR TO SX				Q.O.D. → EVERY OTHER DAY
		- CONSENT FOR INCISION AND DRAINAGE RIGHT FOOT WITH AMPUTATION OF FOURTH AND FIFTH TOES AND BONE AND SOFT TISSUE DEBRIDEMENT AS DEEMED NECESSARY DR BELL TODAY 4PM				MS, MSO4 → MORPHINE SULFATE
						MgSO4 → MAGNESIUM SULFATE
		- NURSING TO APPLY AQUACEL AG + DSD (L) FOOT				SS → 1/2 OR SLIDING SCALE
		- NURSING TO CX (L) FOOT WOUND - SUPERFICIAL CX'S (L) FOOT				> SIGN → ABOVE OR GREATER THAN
		- XRAY (L) FOOT DR BELL / DR DAVIS				

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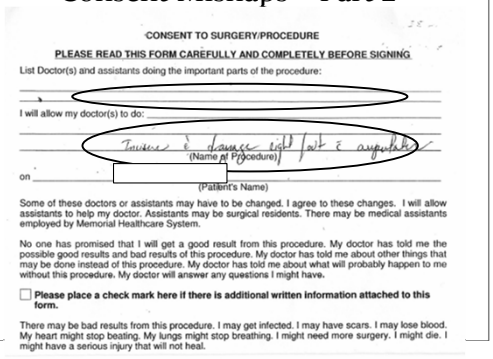
Consent Mishaps – Part 2



CONSENT TO SURGERY/PROCEDURE

PLEASE READ THIS FORM CAREFULLY AND COMPLETELY BEFORE SIGNING

List Doctor(s) and assistants doing the important parts of the procedure:

I will allow my doctor(s) to do:

Tendon & damage right foot & ankle

(Name of Procedure)

on

(Patient's Name)

Some of these doctors or assistants may have to be changed. I agree to these changes. I will allow assistants to help my doctor. Assistants may be surgical residents. There may be medical assistants employed by Memorial Healthcare System.

No one has promised that I will get a good result from this procedure. My doctor has told me the possible good results and bad results of this procedure. My doctor has told me about other things that may be done instead of this procedure. My doctor has told me about what will probably happen to me without this procedure. My doctor will answer any questions I might have.

☐ **Please place a check mark here if there is additional written information attached to this form.**

There may be bad results from this procedure. I may get infected. I may have scars. I may lose blood. My heart might stop beating. My lungs might stop breathing. I might need more surgery. I might die. I might have a serious injury that will not heal.

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The Nurses' Responsibilities in Perianesthesia Setting:

- ✓ Pre-0p Setting – Day of Surgery / Procedure
  - ✓ Verification
    - ✓ Name, allergies, procedure(s), Consents
    - ✓ Labs / tests completed (e.g. EKG) / and Reviewed
  - ✓ Review / Completion of Pre-admit Assessment
    - ✓ Teaching / Discharge plans / Care Plan
  - ✓ Assessment of V/S including pain
    - ✓ Monitoring as needed
  - ✓ Comfort and Safety Measures explained
  - ✓ H & P available / Current

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The Nurses' Responsibilities in Perianesthesia Setting:

- ✓ Pre-0p Setting – Day of Surgery / Procedure
  - ✓ Prep(s) completed
  - ✓ Support of psychosocial & spiritual needs
  - ✓ IV Access & fluid / medication management
  - ✓ Belongings (Anything of Value to Pt.)
    - ✓ Teeth, glasses/ contacts, hearing aids
  - ✓ Communication with family / Tracking System
  - ✓ Communication/ Interaction with surgeon, physician, anesthesia

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Pregnancy Test!

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What can Happen When Things are Missed & Surgery is Cancelled?

- Cancellation Reasons (most are Preventable):
  - Deficiencies / Omissions on Pt. History
    - Not asking Appropriate questions
  - Lacking Assessment of Pt. within days of surgery and / or on arrival of Procedure
  - Fasting did not happen as ordered (No excuse in a Hospital setting)
  - Abnormal Labs not noted /not Corrected in a Timely fashion (*B.S., H & H, K+ most common)
  - Test / Procedure Results not readily available
    - X-Rays, CT, EKG's etc.

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What can Happen When Things are Missed & Surgery is Cancelled?

- Human Factors – Costs to Patients / Families
  - Induces Stress a-nd Anxiety
  - Loss of Working Days (Financial Loss)
  - Increased Medical Costs (LOS)
  - Increased Staff workload
  - Adds to Fasting Time for Patient

Can Lead to Legal Cases for Pain & Suffering!

- Armoeyan, M., Aarabi, A., & Akbari, L. (2021). The effects of surgery cancellation on patients, families, and staff: A prospective cross-sectional study, JOPAN, 36, p 695-701.

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The Nurses' Responsibilities in Perianesthesia Setting:

- ✓ Post-Op Setting – Phase 1
  - ✓ Airway – patency, respiratory function, SaO2
  - ✓ Cardiac & hemodynamic status
  - ✓ Thermoregulation
  - ✓ Level of Consciousness
  - ✓ Pain Level – using appropriate scale
  - ✓ Comfort Level
  - ✓ Sensory / Motor Level/ Function
  - ✓ Patency of all lines / tubes / drains
  - ✓ Skin – color / dressings
  - ✓ I & O
  - ✓ Emotional status
  - ✓ Post-anesthesia scoring system

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The Nurses' Responsibilities in Perianesthesia Setting:

- ✓ Post-Op Setting – Phase 2
  - ✓ Airway
  - ✓ Vital signs / Temp
  - ✓ Level of Consciousness
  - ✓ Pain Level / Comfort Level
  - ✓ Ambulation / Activity tolerance
  - ✓ Swallowing – drinking / eating
  - ✓ Voiding (elimination)
  - ✓ Control of PONV
  - ✓ Discharge Instructions – Verbal / Written – **Signed!**
  - ✓ Prescriptions
  - ✓ Safety to Home / at Home

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The Nurses' Responsibilities in Perianesthesia Setting:

- ✓ Post-Op Setting – Prep for Discharge

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The Nurses' Responsibilities in Perianesthesia Setting:

- ✓ Post-op Setting – Extended Care
  - ✓ V/S as indicated – per level of care
  - ✓ Respiratory Function
  - ✓ Circulatory Function
  - ✓ Pain & Comfort Levels
  - ✓ Medication Management
  - ✓ Safety needs
  - ✓ Skin / Wound / Dressing
  - ✓ Nourishment / Elimination needs
  - ✓ ADL's
  - ✓ Discharge Instructions / Criteria – Like Phase 2
  - ✓ Safe Transport

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Cases to Review

- Tell me what You think!
- Fault or No-Fault for Nurses
- What area was Breached?
  - Could be more than one
- What area was Upheld?
  - Could be more than one
- Brief Discussions

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Possible Malpractice Claims:

- Nursing Actions that Could Predispose a Lawsuit:
  - Failure to follow Standards of Care
    - Failure to follow reasonable Orders and Protocols
  - Failure to use Equipment in a Responsible Manner
    - Failure to follow proper training given
  - Failure to Communicate
  - Failure to Document (or Document appropriately)
  - Failure to Assess and Monitor
    - Failure to Interpret patient data, including **CHANGES** in Condition
    - Failure to Question discharge orders, when inappropriate
  - Failure to Act as a Patient Advocate

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Case # 1 – Pre-op

- Patient arrived pre-op to have 2 procedures that day
  - Vag. Hysterectomy & Retropubic Bladder Suspension
- OB/GYN hand-written orders – faxed to dept.
- Nurse doing pre-op assessment & paperwork did Not pull the "Group's" Standing orders, which included a pre-op antibiotic
  - No antibiotic given in pre-op (*before SCIPS)
- Patient sustained post-op infection a few days later

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Case # 1 – Pre-op

- OB/GYN dismissed from the case
- Hospital / Nurse held liable
- Physician's Group did similar cases at facility on a regular / frequent basis
- The Group had Standing Orders with pre-op antibiotic, but was not used by the nurse
- Omission
- Failure to follow Standards of Care

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Case # 2 – PACU

- Patient arrived in the PACU following Orbital Decompression Surgery
- Order written for ice pack to operative eye to reduce swelling
- Nurse filled glove with ice then secured the glove with a Velcro strap
- Surgeon came in to see patient just prior to discharge
- Patient was permanently blind in that eye

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Case # 2 – PACU

- Expert witnesses said that patient sustained damage to eye due to excessive pressure from Velcro strap
- Nurse / Hospital found Negligent
- Physician not named
- Failure to follow Standards of Care

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Case # 3 – PACU

- Patient came to hospital for an obstetrical procedure
  - Ht. = 4'11" / Wt. = 207 lbs.
- Surgery went according to plan
  - Stable B/P / pulse throughout surgery
- In PACU for 90 minutes
  - **Documented 11 times** in nur. notes pt. having shallow breathing and /or dyspnea, before calling anesthesia
  - Placed on Ventilator – started seizing
- Ischemic hypoxic encephalopathy, d/t ↓ O_2

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Case # 3 – PACU

- Expert witnesses said that patients who fit this category of obesity are more prone to hypoventilation, nurse should have been more aware
- Nurse / Anesthesiology shared the liability
- Failure to Communicate (effectively)
- Failure to act as Patient Advocate

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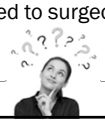
Case # 4 – PACU

- Hospitalized Patient arrived from OR into PACU following Lumbar Laminectomy / Diskectomy
- Left OR with a Blood Pressure of 80/50
- In PACU on arrival – B/P = 88/31; HR = 121
  - Skin pale, abdomen distended
  - Slightly diaphoretic
- No interventions documented as being done to reverse hypotension
- No calls documented to surgeon or anesthesia



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Case # 4 – PACU

- Patient died from hypovolemic shock (hemorrhagic)
- Surgeon, Anesthesia, Nursing, Facility: partially liable
  - Surgeon with greatest liability
- Nurse's part – Failure to Act as Patient Advocate
  - Did not insist surgeon come to bedside to re-assess
  - Did not follow Chain of Command
- Failure to Document
- Omission –
  - Due to being considered a Critical Care area, nurses should have recognized signs of hypovolemia and initiated fluid boluses to try to maintain normal B/P ASAP

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Case # 5 – Phase II

- 53 year-old patient with history of sleep apnea
- Had uvulopalatopharygoplasty and tonsillectomy
- Surgical and PACU times smooth / unremarkable
- Discharged from Phase II – having Met All Criteria
- After a several hours of being home, pt. had a slight fever/ started spitting up small amts. of blood
- Husband called # given for any post-op issues – Told:
  - Bleeding - no need for concern
  - Come in only if Temp 102 or >
- Hrs. later, pt. arrested/ taken to nearest hospital (not same one)

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Case # 5 – Phase II

- Patient went into a coma, and had 4 more arrests
- Died about 4-5 hours after arrival to second facility
- Physician / Hospital / Nurse held liable
- Phone information (from a nurse) / poor advice
  - Should have recommended patient come back to facility
- Physician should have had patient stay in observation status overnight – airway management
- Nurse should have been Patient Advocate to insist patient stay under observation status

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Case # 6 – Pre-op

- 51 year-old pt. came to pre-op for elective procedure
- During assessment irregularity noted on cardiac monitor
  - 12-Lead ECG obtained - some questionable findings
- Anesthesiology reviewed med. record /decided to cancel surgery based on new cardiac status
- Cardiologist on-call came to see patient
  - Recommend: F/U in couple days, Rx X 2 given to pt.
- Nurse documented on D/C instruct. to take new meds as prescribed & make a F/U appt. with cardio.
- 4 days later patient died of cardiac arrhythmia

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Case # 6 – Pre-op

- Patient failed to fill Rx X 2
- Patient failed to make / keep a follow-up cardiology appt.
- Documentation from anesthesia, cardiology, and nurse's discharge instructions all helped to point to no liability
- No Negligence found!

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The Nurses' Responsibilities in Perianesthesia Setting:

- **Additional Tips – Documentation:**
  - Be extra careful when you think you are "too busy"
  - Make sure you document notification of critical values
  - If you communicate something important to someone, document it!
  - Avoid general statements – "Dr. Smith called"
  - When charting by Exception - Know what WDL & WNP mean
  - When charting late in the computer, make sure to adjust "Auto Time of entry" or Date Stamp
  - Never chart in Advance
  - Fill in all Flow Sheets correctly – no Holes

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So…
What Does a Plaintiff's Attorney LOVE to See?

- Failure to Document Notification to Physician
- Failure to Question the Physician
  - Sometimes the burden of proof falls on the Nurse
- Failure to Follow up or Clarify on Unclear Orders
- Failure to use the Chain of Command
- Failure to Follow acceptable Standards of Care
- *Invalid / Incomplete Consents*
- Failure to act as Patient Advocate!

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Questions??

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