PROGRESSIVE SURGICAL Huddle

Keeping you "in the know" in the ASC industry

Minimizing the Risk of Claims/Liability Through Effective Communication

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Learning Objectives

I. IDENTIFICATION AND UNDERSTANDING OF SCENARIOS FREQUENTLY GIVING RISE TO POTENTIAL LIABILITY
- ID Frequent Scenarios of Liability- "Issue Spotting"
- Understand the Factors Giving Rise to Risk

II. DEVELOPMENT OF REAL WORLD SOLUTIONS TO MINIMIZE HEADACHES AND LEGAL LIABILITY
- Useful Tools/Techniques to Reduce Risk
- Implementation of Strategies to Reduce Risk

Overview: Scenarios Frequently Giving Rise to Liability

I. The Formula Giving Rise to Liability + General Scenarios

II. Complications

III. Ostensible Agency Liability- Physician Relationships

The Formula for Liability + General Scenarios

I. The Formula for Claims:
- BAD RESULT + "SOMETHING ELSE" = LAWSUIT

II. The "Something Else"- Scenarios Typically See
- Perceived Hostile Interaction
- Too Busy
- Perceived Failure to Listen
- Lack of Empathy
- Billing/Payment Disputes
- Medical Record/Documentation Issues

Real World Scenarios

I. Front Office
- Pt. Anxious/Feeling Rushed
- Understands Documents have Legal Significance, Yet Rushed to Sign (e.g. Consents)
- Pt. Asked to Sign Before Speak with Physician (e.g. Questions of Surgeon, or Before Speak with Anesthesiologist)

Real World Scenarios

I. Patient/Patient Representative Has Questions
- Pt Feels Intimated/Discouraged From Ask Questions
- Pt Feels Staff Too Busy
- Patient Has Questions Physicians Not Address

II. Pre-Op Nursing Interactions
- Nurse Too Clinical/Not Empathetic
- Nurse Not Thoroughly Review Pt. Questionnaire/Hx (Allergies, Meds, etc.)
- Nurse Fails Notify Physicians of Questions or Requests

Real World Scenarios

I. Intra-Operative Interactions
- OR Discussions/Events
- Incidents of Waking During Surgery

II. PACU/Post-Discharge
- Nurses Too Busy
- Lack of Interest in Patient or Symptoms
- Lack of Physician Interaction/Communication
- Perceived Uncontrolled Nausea/Vomiting/Pain
- Inadequate/Contradicting DC Instructions
- Medical Records- Failure to Produce + Failure to Document
- Billing Issues

Real World Solutions

I. General Rule:
- Be Caring, Competent, Concerned, and Interested In Patient's Care

II. Patient Interactions Generally:
- Sit Down When You Speak with Them
  - Leaves Impression Providing Full Attention
- Call by First Name
- Ask What Patient/Patient Reps Expectations Are
  - Ability to Address Unreasonable Expectations

Real World Solutions

I. Patient Interactions Generally (continued)
- Give Patient/Patient Rep Time to Read Forms/Ask Qs
- Apprise Physicians of Patient Qs/Concerns
  - Tell Patient You Relayed Info to Physicians
- Thorough and Empathetic PACU Interactions
  - Confirm Awareness of Sx/Complaints
  - Apprise Patient/Rep of Interactions Taken
  - Tell Patient Physician Aware (if Appropriate)
  - Ask if Need Anything- and Do It!
  - Clear and Thorough Review of DC Instructions
  - Ask if Any Remaining Questions
  - Empathetic Lasting Impression

Real World Solutions

I. Patient Interactions Post DC/Transfer:
- 24 Hour Follow-Up Call
  - Opportunity to Reinforce You Care
  - Opportunity to Determine if Issues Exist…and Defuse Any "Spark"
  - Opportunity to Reinforce You are the Patient Advocate
  - Ask Questions, Respond to Issues, Act Timely, and Communicate Efforts Undertaken
- Billing and Collections
  - Bill or Collections = Definite "Spark"
  - Consider Waiver of Bill
  - Waiver of Bill May Not Circumvent Claim: Get Release
  - Seriously Balance Collection vs Risk Lawsuit

Complications

I. The General Rule:
- Generally All Patients Believe Complications = Negligence

II. Don't Let The "Something Else" Create The Spark
- Perception Too Busy = You Caused or Made Worse
- Perceived Failure to Listen- Same
- Lack of Empathy = Anger and Revenge
- Medical Record/Documentation Issues- Inconsistencies and Failure to Chart

Real World Solutions

I. Assign a "Point Person" for Interaction with Patient/Rep
- Same Person Prevents Inconsistent Statements
- Prevents Feeling of "Bounced Around"
- Creates Chance for Catharsis
- Associates Favorable "Face" with ASC

II. Physician Awareness and Coordination
- Make Sure Physician is Aware
- Coordinate Who is to Communicate Re Incident
- Coordinate What is Said to Patient/Patient Rep
- Make Sure Coordination is PR/QA/CQI/PI

Real World Solutions

I. Communications with Patient/Patient Rep:
- Timely and Non-Evasive
- Expressions of Empathy/Sorrow, but Not Guilt
- Listen More Than Talk
- Ask if Can Do Anything… and Do It
- Document Interactions in PR/QA/CQI/PI
- Let Patient/Patient Rep Know Physician Aware

II. Consider Obtain Release Agreement- Timing is Everything
- Legal Counsel Involved
- State Laws Governing Timing
- Waiver ASC Fees Not Necessarily Waive Right to Claim
- Benefit of ASC Fees Waiver Diminished if Physician Pursues Fees

Real World Solutions

I. Chart in Lock Down
- Ensures No Alterations
- Avoid Spoliation Claims/Ramifications
- Awareness of If/When/To Whom Copies Made

Ostensible Liability – Communicating Physician Relationships

I. The Issue:
- Generally ASCs Not Liable for Acts of Independent Contractors
- Exception: ASC Liable for Acts of "Agents" or Persons "Reasonably Believed to Be an Agent"
- Have You Communicated to Patient the Physician is Independent Contractor?

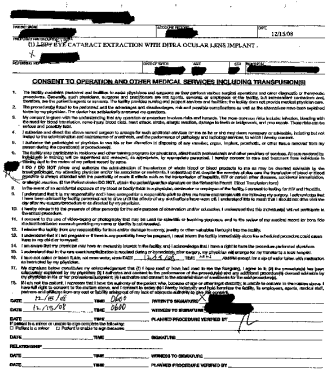
II. The California Example:
- Mejia v. Community Hospital – the Facts
- The Import- Clearly Communicate in Writing the Physicians are Independent Contractors in All Capacities

Ostensible Liability – Communicating Physician Relationships

I. Scenarios Giving Rise to Liability:
- The Surgeon
- The Anesthesiologist
- The ASC Medical Director
- Others Not Actually Employed by the ASC

Real World Solutions

I. Written Disclosure Physicians Are Independent Contractors on Form Signed by Patient/Patient Rep
- Surgeons, Anesthesiologists, etc.
- Written Disclosure That Patient Cannot Later Dispute
- Disclosure on Surgical Consent Form/Anesthesia Consent Form:



CONSENT TO OPERATION AND OTHER MEDICAL SERVICES INCLUDING TRANSFUSION(S)

Real World Solutions

I. Written Disclosure of Any Financial Interest of Physician in ASC
   - Partner/Owner Physician?
   - Still Independent Contractor Relationship
   - Right to Decline Procedure/Have Performed Elsewhere

II. Written Clarification of Medical Director Status
   - Language re Medical Director is Independent Contractor
   - If Medical Director of ASC is Treater, NOT Acting as Medical Director When Providing Care

Real World Solutions

I. Written Disclosure
   - Signage in Waiting Area
   - Disclosure on Form Signed by Patient/Patient Rep

Thank You!

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PROGRESSIVE SURGICAL Half Time

October 27, 2017 11am PT/ 2am ET

ASK THE CLINICAL DIRECTOR PANEL

Crissy Benze, MSN, BSN, RN
Alison Galloway
Denise Carpenter
Jenn Sargent

$75 or FREE for eSupport members

Mark Your Calendars

PROGRESSIVE SURGICAL Huddle

November 20, 2017 11am PT/ 2am ET

ANNUAL SURVEY WATCH REPORT

Crissy Benze MSN, BSN, RN
Progressive Surgical Solutions