

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

 - PL. Altxious/Feeling Rushied
 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)

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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

- 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
 - o Tell Patient You Relayed Info to Physicians
 - Thorough and Empathetic PACU Interactions
 - o 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
 - o Ask if Any Remaining Questions
 - Empathetic Lasting Impression

Real World Solutions

- I. Patient Interactions Post DC/Transfer:
 - 24 Hour Follow-Up Call
 - o 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"
 - o Consider Waiver of Bill
 - Waiver of Bill May Not Circumvent Claim: Get Release
 - o 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
 - EverythingLegal 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

- I. Chart in Lock Down

 - 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

- 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:

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Real World Solutions

- I. Written Disclosure of Any Financial Interest of Physician in $\ensuremath{\mathsf{ASC}}$
 - 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

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

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Send Questions to $\underline{info@pss4asc.com}$

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October 27, 2017 11am PT/ 2am ET
ASK THE CLINICAL DIRECTOR PANEL

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



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PROGRESSIVE SURGICAL Huddle	
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