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# **RISK MANAGEMENT PRESENTATION TO RNAO:**

## **NURSING LIABILITY AND WHAT TO DO IF I RECEIVE A CLAIM?**

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# Agenda

- Nursing Liability
  - Negligence/Malpractice
  - Other sources of liability
  - Categories of nursing negligence
  - How to minimize liability
  - Importance of documentation
  - Case study: *Skeels (Estate of) v. Iwashkiw*, 2006 ABQB 335
  - Good Samaritan doctrine
  - Claims examples
- What to do if you are named in a lawsuit?
  - Policy requirements
  - Claims Process

# Nursing Liability

- What is Negligence?
  - Breach of a duty to take care
  - “Reasonable Prudent Person” test
  - Errors in judgement, or unexpected or unintended medical consequences do not necessarily mean negligence
  - Malpractice- instance of negligence on the part of a professional

# Nursing Liability

## Elements of Malpractice:

1. Duty: exists? scope?
2. Breach of Duty: departure from good and accepted practice
3. Damages
4. Causation: link between the action/inaction that did not meet the standard and the injury

# Nursing Liability

Other sources of nursing liability:

- Legislation (Ontario):
  - *The Nursing Act, 1991*
  - *Regulated Health Professionals Act*
- Regulatory/Governing Bodies (i.e. CNO)
- Employer policies, professional literature, expert opinions
- All help to define the standard of care

# Nursing Liability

## Categories of Negligence

- Failure to follow standards of care
- Failure to use equipment in a responsible manner
- Failure to communicate
- Failure to document
- Failure to assess and monitor
- Failure to act as a patient advocate

# Nursing Liability

- How to Minimize Liability?
  - Open, honest communication
  - Maintain professional competence
  - Knowledge of legal principles and incorporate into practice
  - Practice only within scope of license
  - Practice only within scope of competency
  - Never make statements that could be interpreted as admissions of guilt
  - Document patient care activities and communications



# Nursing Liability

- Importance of Documentation
  - Reduces risk
  - Role of court – weigh evidence
  - Common discrepancies: symptoms complained of, signs that did/did not exist, care/ treatment recommended, actions actually taken in treatment
  - Rule of Thumb – if it wasn't documented, it didn't happen
  - Failure to document when there is legal or established practice to do so is a breach of the standard of care

# Nursing Liability

- *Skeels (Estate of) v. Iwashkiw*, 2006 ABQB 335
  - Delivery became complicated after episode of shoulder dystocia resulting in death of infant
  - Medical charts and records covering the critical time were poorly maintained and contained little detail

# Nursing Liability

- *Skeels (Estate of) v. Iwashkiw*, 2006 ABQB 335 (Cont.)
  - Court held:
    - A nurse's standard of care will include intervention, such as calling for assistance from another physician in exceptional circumstances
    - Dr. was suffering from visible emotional distress
    - Health care team facing a multiplicity of tasks
    - Nurses assisting doctor were found to breach the standard of care in failing to summon timely, competent back-up help

# Nursing Liability

- *Skeels (Estate of) v. Iwashkiw*, 2006 ABQB 335 (Cont.)
- A note about documentation:
  - “It is the medical community, not the courts, that set the level of appropriate charting as part of the accreditation process and hospital policy standards on charting and record keeping. It is, however, the courts that are called upon to determine, often in the face of conflicting evidence, what occurred in a bad medical outcome, and whether fault should be attributed”

# Nursing Liability

- *Skeels (Estate of) v. Iwashkiw*, 2006 ABQB 335 (Cont.)
  - The lack of charting does not necessarily mean the procedures were not conducted or that there was negligence. However, lack of charting makes it more difficult for courts to assess credibility and for the court to accept that the correct steps were followed and appropriate procedures were done as it would have been logical for them to be recorded had they been done

# Nursing Liability

- Good Samaritan doctrine
  - *Good Samaritan Act, 2001*
  - Despite the rules of common law, a person...(including a health care professional) who voluntarily and without reasonable expectation of compensation or reward provides the services...(including emergency health care services or first aid to a person who is ill, injured or unconscious as a result of an accident or other emergency) is not liable for damages that result from the person's negligence in acting or failing to act while providing the services, unless it is established that the damages were caused by the gross negligence of the person.

# Nursing Liability Claims Examples

- 1. Patient suffered renal failure after repeated administration of a drug
  - 1.3 M in damages claimed
  - Pain and loss of enjoyment of life, continual medical care, unable to walk unassisted, loss of income and expenses, unable to fulfill household, parental and spousal obligations
  - No liability assessed against the nurses because they had appropriate documentation to support their position that they had repeatedly advised patient to see doctor upon examination

# Nursing Liability Claims examples

- 2. Patient had to undergo post-operative amputation of toe following elective surgery of webbed feet
  - Nurses provided evidence that they advised patient to see a doctor upon observation of infection; however, evidence contradicted that of patient
  - No notes to corroborate nurses position
  - Expert evidence required to support defence



# What to do if you are named in a lawsuit?

- Do NOT admit liability
- Contact your employer
- If no employer's insurance, contact your insurance broker/carrier immediately
- Preserve all existing documents, (including electronic) document details of the incident (time, location, names of people involved)
- Do not discuss your claim with anyone other than your appointed defence counsel

Questions?

Thank you