

# Preventive Action

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## Physician/Hospital Affiliation: Increased Liability or Enhanced Risk Management?

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*"Reliability is a dynamic non-event to truly understand the reliable organization is to accept that certain systems must be in place to offset the risks that are inherent in any complex process. (1)*

**The symbiotic relationship between physician and hospital can either enhance loss prevention efforts, or increase exposure to professional liability. A proactive approach will identify the inherent risks and call to accountability both individual and facility-wide responses.**

### Professional Expertise

The professional expertise of the associated medical staff and allied health professionals has a direct impact on a physician's professional liability exposure. Appropriate credentialing of the medical

staff, allied health professionals, and specialty consultant staff will enhance the reliability of total patient care by the medical team. Peer review and quality reviews should be integrated into the re-credentialing process. Written protocols for allied health professionals such as Physician Assistants, CRNA's, and Anesthesia Assistants should delineate criteria according to the scope of practice of the supervising physician and the types of clinical situations, which require direct and indirect supervision or physician consultation.

### Employee Competency

Assurance of the credentials, educational preparation, and clinical competency of the professional and ancillary staff will decrease exposure to medical errors related to staffing support, and the accuracy and timeliness of communications. Staffing adequacy will evidence itself in daily outcomes as well as staff morale and turnover.

### Equipment

Errors and injuries related to equipment are difficult to defend where it is unclear whether the problem resulted from equipment failure or user error. Proper maintenance by an appropriate biomedical service ensures that equipment will function well and validates the hospital's dedication to a high standard of patient care. Beware of sharing critically needed equipment between departments, such as the surgical suite sharing patient monitoring or emergency resuscitation equipment with the recovery room or holding area. Proper training and orientation of the staff must be assured.

### Documentation

A frequent allegation in malpractice claims relates to failure to document. Medical record reliability and continuity of care are enhanced by appropriate format and completeness of documentation. Illegible, inconsistent, or inaccurate documentation continues to be cited as a primary root cause of both medication and treatment errors. Order entry for physicians reduces the problem of illegibility, but a culture where verification and clarification is welcome also promotes accuracy. Appropriate formats for preoperative assessment, informed consent, and intra-operative care documentation create the foundation of a reliable medical record for the anesthesiologist. Synchronization of wall clocks and wristwatches in the surgical suite is very important for accurate documentation of medications, surgical times, and especially when charting emergency interventions such as CPR and critical interventions. A formal committee should regularly review and revise forms to prevent inadequate or inappropriate documentation.

### Informed Consent Policy

Informed consents should be specific enough to include risks, benefits, and alternatives as well as clear descriptions of the planned procedure, correct site, and alternative procedures. The informed consent process should be negotiated between the patient and the physician personally. It is not just paperwork. It is an excellent opportunity to cultivate patient trust, good rapport, and realistic expectations.

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**Diagnostic Resources**

Pre-operative diagnostic studies, by design, must be available on the chart before the patient enters the surgical suite. A firmly supported policy of timely reporting will ensure that all clinical information is available to the anesthesiologist before anesthesia is administered. The failure to recognize and respond to complications in a timely manner can often be attributed to faulty written communication. Appropriate specialists, consultants, diagnostic capability, and referral services should be available to serve the patient population in a timely manner. Results should be available in timely and legible reports. The culture of the organization should ensure that critical values are communicated and addressed in a timely manner.

**Transcription services**

Transcription services should be provided by knowledgeable, experienced staff, with timely turn-around-time to ensure continuity of care. Transcribed dictation should provide for prompt proofreading before finalized acceptance and availability. When appropriate, dictation templates for special procedures and high-risk conditions or diagnoses can serve to enhance the completeness of dictation.

**Pharmacy, Therapeutics and Purchasing Services**

Severe medication errors have resulted from unannounced changes in pharmacy suppliers, changes in formularies, and purchasing decisions. A change in purchasing of two very different medications, which are supplied in almost identical foil packages with unclear labels advent a catastrophe. Procedures involving the Purchasing Department, Pharmacy, and Therapeutics Committee to facilitate notification and communication to physicians of the look-a-like situation should be implemented. Precautionary labels and storage arrangements should also be consistently employed to alert all staff to the increased risk of medication error.

**Customer Service/Patient Relations**

The decision to sue is often the result of a patient's feelings of not being respected, or treated with understanding. Frequently, the decision is made because the patient feels it is the only way to get their questions answered. Effective patient dissatisfaction programs enable the organization to handle and de-escalate problems quickly, thereby lessening the likelihood of litigation. Perception of safety and well-being is influenced by the respectful and even congenial attitudes displayed between staff, patients and visitors. Excellent internal customer service promotes reliability of services, clear communications, and quality patient care. It provides an environment where interdepartmental communications are efficient. Questions are welcome to clarify understanding of physician orders, proper technical procedures, and information vital to successful patient care.

Attention to quality standards and initiatives should be obvious. Current clinical practice standards and ongoing educational opportunities will further promote patient safety, thereby reducing the medical malpractice liability associated with the practice environment.

(1) James Reason, Managing the Risks of Organizational Accidents. Hampshire, England: Ashgate Publishing Limited, 1999. p. 37



## Awareness During General Anesthesia

Joseph F. Putz, LHRM,  
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A patient's awareness of pain and paralysis attributed to inadequate anesthesia can lead to significant consequences including psychological trauma for the patient and financial exposure to the anesthesiologist. Although the incidence of these occurrences is quite small, with estimates in the range of 0.2 to 0.7 percent, the frequency factor of malpractice claims attributed to inadequate anesthesia is increasing. The implementation of several fundamental procedures can significantly reduce the incidence and impact of this risk.

A review of 69 suits (1996 ASA Closed Claim Project), for awareness during general anesthesia indicated that 54 patients had recall of events or surroundings. An additional 15 were paralyzed awake prior to receiving an induction agent. Claim payments arising out of these suits ranged from \$1,500 to \$600,000. The prevalent factors contributing to these claims include widespread usage of neuromuscular blocking drugs, use of ultra-short IV agents without close control of their serum concentrations, the demand for rapid turnover of operating rooms, media coverage of awareness during anesthesia, and successful litigation in malpractice suits.

When confronted with a patient who indicates that they recall events during anesthesia, make time available to see the patient. Elicit the details of their recollection, in detail, asking what was the last thing they remember before going to sleep and what their first memory is upon awakening. One of the most difficult hurdles in the defense of patient awareness claims is quantifying the extent of patient injury, if any. Document the discussion thoroughly, and try to give a candid explanation of what happened. You should notify the surgeon and APAC of the incident as well.

Recommendations to avoid awareness claims include:

- Review the anesthesia techniques utilized – confirm the adequacy of the drugs and dosages.
- Begin each day with an anesthesia equipment/device checklist.
- Check the drug labels on syringes.
- Limit the anesthesia materials on your cart to the ones necessary for induction and maintenance.
- Avoid large doses of muscle relaxants – don't use muscle relaxants to cover up inadequate anesthesia.
- Consider including the possibility of awareness in your informed consent documentation.

## Legislative Alert: HB 103 – Medicinal Drug Prescriptions

The Florida Legislature passed HB 103 during the 2004 session that has become law. The new law requires prescriptions for drugs that are not controlled substances and are written by practitioners who are not eligible for a federal drug enforcement administration number, such as a physician assistant (PA) or advanced registered nurse practitioner (ARNP), to include the practitioner's name on the container of the drug that is being dispensed. A prescription written by a Florida-licensed ARNP or PA for a drug that is not a controlled substance is presumed, subject to rebuttal, to be valid and written within the parameters of the prescriptive authority. For purposes of the presumption, the prescriptive authority must be delegated to the ARNP by a Florida-licensed medical physician, osteopathic physician or dentist and in the case of a PA, the prescriptive authority must be delegated by the physician assistant's supervising physician.

### Comparative Claim Trend Analysis Anesthesiology

- Anesthesiology ranks in the top 10 of all medical specialties by claim frequency.
- 33.9 percent of closed claims are paid.
- 2002 average indemnity paid - \$286,206.
- Florida Anesthesiology closed claim frequency increased 130 percent in 2002.
- ET tube placement or maintenance is the most prevalent claim etiology.
- Mortality or permanent CNS damage resulted in 90 percent of claims.

PIAA Closed Claim Study 2004  
1985-2002 Cumulative National Data  
Office of Insurance Regulation

## Effective Communication: Regional Differences

A risk management consultant was in a clinic and overheard a physician speaking with his patient about the proper times to take his medicine. The physician reiterated to the older gentleman the importance of taking the medication before breakfast and before dinner. The patient indicated that he understood. The physician, to assure compliance, asked the gentleman when he was supposed to take his medication. The gentleman replied, "I take it in the morning and at noon." The doctor corrected the patient and said, "No, don't take it at noon." The patient then asked when he should take it. The physician reiterated his initial instructions. This exchange went on for several minutes until a seasoned nurse walked up and asked, "What's the matter?" When the physician explained the situation and his frustration, the nurse turned to the patient and said, "Take your medication before breakfast and before supper." "Ah," said the elderly patient to the doctor, "Why didn't you say that in the first place?"

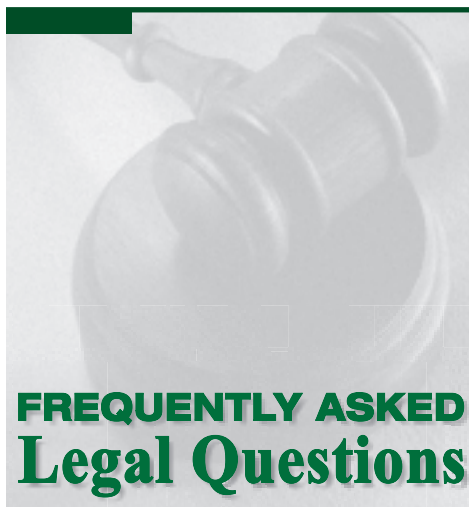
Regional differences affect communication. Make sure you know and use the *language* of your patients. You may not be communicating as well as you think you are.

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**How long must a physician retain medical records?**

Per Florida Administrative Code 64B8-10.002, for five years. However, APAC recommends that records be kept for a seven-year period from the point of last patient contact given the maximum statute of limitations for medical malpractice. However, for patients under the age of one, records should be retained until the child's eighth birthday. If the patient is age one year or older, then keep records for the seven year period.

**What action should be taken when a medical error is suspected or occurs?**

Contact APAC's Risk Management Department for guidance as soon as possible. Make no admissions of liability.

Federal and/or state reporting requirements under strict time constraints may apply. Always attempt to discuss the situation with personal counsel or APAC before meeting with hospital risk management.

**Should professional fees be waived or refunded when a patient is dissatisfied?**

Not always. It depends on the particular situation. First give the patient the opportunity to describe the reason for their dissatisfaction. Attempt to correct the situation, if possible. If the patient demands a refund, waiver of fees, or the issue cannot be remedied, contact APAC's Risk Management Department or personal counsel for specific guidance. What some may interpret as an act of accommodation, others may view as an admission of liability.

**Do mandatory reporting requirements set forth by Florida statutes pre-empt HIPAA privacy provisions?**

Generally, yes. A good example would be FS 381.003 which requires a physician that diagnoses or suspects the existence of a disease of public health significance to immediately report the fact to the Department of Health. However, because the legal waters pertaining to most HIPAA privacy provisions have yet been tested, it is wise to seek legal or risk management guidance first.

**Do Florida statutes set forth limitations regarding prescribing controlled substances for pain management?**

- Yes. Pursuant to FS 458.326,
- (1) ...the term "intractable pain" means pain for which, in the generally accepted course of medical practice, the cause cannot be removed and otherwise treated.
  - (2) Intractable pain must be diagnosed by a physician licensed under this chapter and qualified by experience to render such diagnosis.
  - (3) ...a physician may prescribe or administer any controlled substance under Schedules II-V...for the treatment of intractable pain, provided the physician does so in accordance with that skill, and treatment recognized by a reasonably prudent physician under similar conditions and circumstances.
  - (4) Nothing in this section shall be construed to condone, authorize, or approve mercy killing or euthanasia, and no treatment authorized by this section may be used for such purpose.