LESSONS LEARNED FROM MALPRACTICE CLAIMS

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Jury science shows

**Benefit of the doubt**

goes to…

healthcare provider
If... Healthcare Provider

- Not too *busy*
- *Listens* to patient
- Not *arrogant*
Shown by...

- 2 C’s
- Communication
- Documentation
Looking at real world claims and lawsuits

Share “lessons learned”

- Vicarious Liability
- Informed Consent
- Staff Services
- Multiple Caregivers
Today’s reality
Backdrop: Growth of Non-Physician in Healthcare 1999-2016

Source: AAPA.ORG AND AANP.ORG (NP/PA NATIONAL ORGANIZATIONS)
III. Vicarious Liability
Jury Instruction-Vicarious Liability

T.P.I. – CIVIL 6.17 Vicarious Liability of Physician

1. The [staff][nurse][assisting physician] was negligent in the performance of required duties during treatment of the plaintiff; and

2. The [staff][nurse][assisting physician] was under the direction or control of defendant at the time of the negligence, regardless of who employed or paid the [staff][nurse][assisting physician].
Which image best describes your practice?

- Castle
- Silos
- Team
How jury sees you

Castle or Silos
The Law is...

Team
Advanced practice provider supervision

- Physician or substitute physician **must** be available for consultation at **all times**
- **Must** have experience and/or expertise in the **same area** of medicine as the Advanced Practice Provider
- **Must** authorize drugs on the formulary
- **Jointly** developed protocols

TN Board of Medical Examiners Rule 0880.06
Supervising physicians *must*...

Review 100% of records if controlled substance prescriptions are given

#discoveryaudit
IV. Informed Consent
1. A (physician) has a duty to give a patient certain information before treating the patient; the information the physician must disclose is that information about the treatment involved and its attendant risks to enable the patient to make an intelligent decision about whether to undergo the treatment.
2. In determining how a reasonable patient would have acted under the circumstances, you should consider the testimony of the plaintiff, the plaintiff’s [idiosyncrasies], [fears], [age], [medical condition], [and] [religious beliefs], the presence or absence of alternative [procedures], [treatments] and the potential risks and benefits thereof, and the impact of no [treatment], [procedure] on plaintiff’s health.
Informed Consent

Who Prepared the form?

#Nondelegableduty

#SVMIC Resources
- Handout materials
- Video
- Patient takes test (before some procedures)
- Opportunity to ask questions
- Doctor goes over risk/benefits/alternatives with patient
When and what is enough?

- Verbal or written?
- Patient specific or macros?
- One time or multiple?
- All drugs or high risk drugs?
- All procedures or out-patient procedures?
Informed Refusal - Other side of coin

Examples:
- Vaccines
- Refusal radiation/chemotherapy
- Refusal cardiology consult
- Refusal screening colonoscopy
Informed Refusal Action Items

- Ask **reasons** for refusal.
- Emphasizing **consequences** of refusal.
- **Document** patient’s refusal.
- Obtain patient’s **signature** on “informed refusal”.
- If patient referred by consult, **document** refusal to any referring physician.
Informed Consent in lawsuit

Rare…

lawsuit *focus* Informed Consent

Rarer still…

Informed Consent *not* part of the case

Always goes…

to show standard of care
Informed Consent is…

- Risks/benefits/alternatives
- Clear
- Documented (> 1x)

- Choice/personal responsibility  #medicalbattery
The existence of a written consent form gives rise to a presumption of consent in the absence of proof of misrepresentation, inadequate disclosure, forgery, or lack of capacity. (Church v. Perales, 39 S.W.3d 149, 2000 Tenn. App. LEXIS 567 (Tenn. Ct. App. 2000))
V. Staff Services: Barrier or Access?
- **Written** Protocols

  ...reviewed by physicians

- **Repeat** training
- Importance following up hospitalizations
- Importance following up office no-shows (clinical vs. staff)
- Duty commensurate with potential consequences of missed treatment
- Importance following up transition of healthcare providers
Will you be…

Castle

or

Team
VI. Multiple Caregivers
How do you defend the failed last chance?
How will you run your practice?