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Kathy Ferrell: Medical-Legal Consulting Newsletter January 2006

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Greetings!

Happy New Year! I hope you find my newsletters useful and informative. I welcome your suggestions for future monthly newsletters, including topics you would like for me to address. Also, I would appreciate your forwarding my newsletter to other attorneys who may need assistance in medical malpractice, personal injury or product liability cases. I look forward to being of service to you.

WHAT CAUSES ERRORS IN HOSPITALS?

The Joint Commission's (Joint Commission on Accreditation of Healthcare Organizations, or JCAHO) Sentinel Event Policy is designed to improve patient safety in organizations which experience serious adverse events in patient care. The policy also encourages the self-reporting of medical errors to the Commission which enables it to learn about the relative frequencies and underlying causes of sentinel events. It also enables sharing of "lessons learned" with other health care organizations, thereby reducing the risk of future sentinel events in other organizations.

A sentinel event is any unexpected occurrence involving death or serious physical or psychological injury, or the risk thereof. Serious injuries specifically include a loss of limb or function. The phrase "or the risk thereof" includes any process variation for which a recurrence would carry a significant chance of a serious adverse outcome.

Analysis of data from January 2001 through July 2005 reveals the following top 5 Sentinel Events by Setting of Care:

General Hospital

- Operative / post operative complication 17.6%
- Wrong site surgery 16.0%
- Medication Error 12.2%
- Delay in Treatment 6.0%
- Falls 4.8%

Hospital Emergency Department

- Delay in treatment 51.6%
- Medication error 10.1%
- Suicide 8.2%
- Restraint-related event 3.1%
- Assault/rape/homicide 1.9%

Long Term Care

- Patient falls 29.6%
- Elopement 9.6%
- Ventilator death 7.8%
- Assault/rape/homicide 7.8%
- Suicide 7.8%

In 74% of the events the outcome was patient death. The overall root cause for these events was communication or lack thereof (65%) followed by orientation/training of staff (58%). <http://www.jcaho.org/accredited+org+anizations/sentinel+event>

In my 2006 newsletters I will focus on each of these categories of sentinel events by evaluating the root cause and how medical documentation can be used to identify deviations from the standards of care in these error classifications. Nurses are uniquely qualified to review medical records in such cases and in addition have insight into the daily operations of the hospital environment. Unlike physicians who must spend most of their time in their office or a surgical suite, the nurse's responsibilities place him or her at the patient's bedside where these adverse events occur.

BLACKLISTING PHYSICIAN EXPERT WITNESSES

Termination or suspension is a new, yet controversial, trend these days for physician expert witnesses. It is doctor against doctor. A 1988 study conducted by Harvard University found that most of the physicians polled were reluctant to label substandard care as negligent. Doctors understand that the practice of medicine isn't perfect. One doctor was quoted as saying, "In most cases, it's a good doctor who made a mistake."

Plaintiff attorneys only want good cases; therefore, they search out good experts. Common characteristics lawyers look for in expert witnesses include:

- Qualifications – The physician needs to know his/her field of medicine. In Alabama the expert must be in the same specialty as the one called into question in the case.
- Communication Skills – The expert must be able to take complex information and break it down in a way that a jury and judge can easily understand.
- Appearance – It matters.

Some physicians do say they review cases which could be considered frivolous, and often complain that the court system allows expert witnesses who are "hired guns". Most all physicians support the threat of repercussions for hired guns. Organized punishment is a quietly growing "cause" around the country. The American Association of Neurological Surgeons has led the way in punishing members for testimony which it

considers professionally unsound. The American Medical Association now supports using erroneous testimony as a basis for state discipline. In 1998, the AMA declared that when a physician gives medical legal testimony, it's considered the practice of medicine and subject to peer review. The American Society of Anesthesiologists' newsletter declared in 2002, that when it comes to doctors working as experts, "As a rule defense work is good, and plaintiffs' work is bad." As physicians themselves work toward guidelines which state that physician experts should be familiar with the case and not just rely on the attorney's summary, and be a neutral observer and not advocates for the side which hired them, we still have physicians that feel testifying is a matter of social responsibility when a patient has been harmed because of negligence.

As a legal nurse consultant, I have obtained the CVs of hundreds of qualified physician experts in over 38 medical specialties. I also have sought the CVs of some of the most experienced and well qualified registered nurses in most nursing specialties. I hope you will consider contacting me in the event that you need a testifying expert. It is my goal to match education, practice areas of expertise, location and other specific requests when locating testifying experts for both plaintiff and defense attorneys. I hope you will consider contacting me in the event that you need a testifying expert.

Contact Information

email: kathy@ferrellconsulting.com
phone: 205-566-5406
web: <http://www.ferrellconsulting.com>

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Kathy Ferrell: Medical-Legal Consulting | 1037 Blue Heron Point | Birmingham | AL | 35242