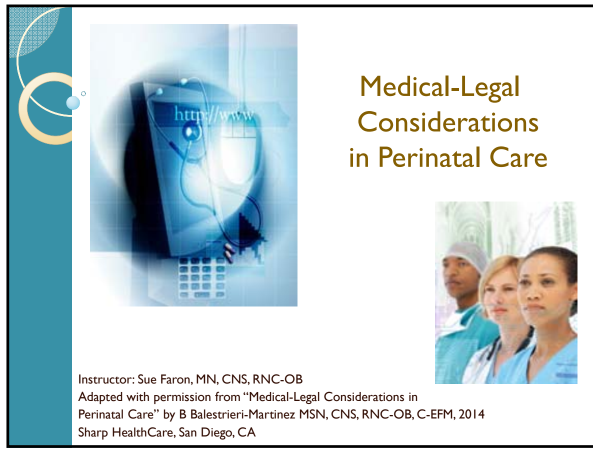

Medical-Legal Considerations in Perinatal Care

Instructor: Sue Faron, MN, CNS, RNC-OB
Adapted with permission from "Medical-Legal Considerations in Perinatal Care" by B Balestrieri-Martinez MSN, CNS, RNC-OB, C-EFM, 2014
Sharp HealthCare, San Diego, CA

Objectives

- Identify *areas of risk* within perinatal care
- Outline basic elements of *malpractice*, *liability* and the *standard of care*
- Review *principles of documentation* to better provide written accounts of patient care
- Discuss techniques to enhance active communication with team and providers
- Illustrate *supportive resources* for documentation and communication

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Areas of Risk: Data Analysis

ACOG Survey on Professional Liability: 2012

Obstetrics – Closed Claims Overview

Nurses: 2006-2010

Severity by Nurse Specialty

(Closed Claims with Paid Indemnity ≥ $10,000)

Nurse specialty	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Obstetrics	10.3%	$20,264,713	$382,353
Neurology/neurosurgery	0.6%	$1,137,000	$379,000
Plastic/reconstructive surgery	0.8%	$1,297,500	$324,375
Pediatric/adolescent	2.7%	$3,486,250	$249,018
Behavioral health	1.7%	$1,367,500	$151,944
Correctional health	3.1%	$2,315,208	$144,701
Adult medical/surgical	40.1%	$29,801,615	$143,969
Emergency/urgent care	9.7%	$7,091,584	$141,832
Public/community health/hospice	8.9%	$6,368,790	$138,452
Gerontology - in aging services facility	18.0%	$9,327,317	$100,294
Aesthetic/cosmetic	3.7%	$821,875	$43,257
*Other	0.4%	$55,000	$27,500
Overall	**100.0%**	**$83,334,352**	**$161,501**

PeriGen

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Excuses that don't work:

- Nursing workload
- Technical complexity
- "I did what the doctor ordered"

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Common Obstetrical Claims

- Category II/III FHR tracing not recognized or addressed
- Delay of cesarean section; especially following TOL, vacuum
- Induction of labor without sufficient monitoring in TOLAC patients
- Induction with known macrosomia
- Untreated gestational diabetes, GBS

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Common Obstetrical Claims cont'd

- Unrecognized pre-eclampsia
- Inadequate or altered documentation
- Non-reactive NST with no intervention or further testing
- Lack of documentation of risk factors (e.g. domestic violence, drug/alcohol/tobacco use, preterm labor)

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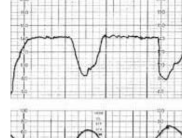
Liability Issues: Electronic Fetal Monitoring

- Failure to recognize "fetal unhappiness"
- Failure to communicate urgency or notify *chain of command*
- Improper management of 2nd stage
- Delay (of any kind)
- EFM interpretation issues



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Social Media

Advantages

- Disseminate information quickly to a large audience
- Send the message that "our institution is cutting edge"
- Provide a venue to chat about health topics
- Alert the community to relevant health information

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Social Media

- **Disadvantages**:
  - Disseminate information quickly to a large audience
  - Can send the wrong message in the wrong hands
  - Provide a venue for unsupervised, embarrassing posts
  - Serves as a weapon in a lawsuit

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Social Media Boundaries

- Should you accept a friend request?
- Should you comment on a patient's blog?
- What if a parent or spouse asks for an update via text?
- What do you do about videotaping?

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ACOG
THE AMERICAN CONGRESS
OF OBSTETRICIANS
AND GYNECOLOGISTS

COMMITTEE OPINION

Number 622 • February 2015
(Reaffirmed 2017)

Committee on Professional Liability

This document provides risk management information that is current as of the date issued and is subject to change. This document does not define a standard of care nor should it be interpreted as legal advice.

Professional Use of Digital and Social Media

ABSTRACT: Digital and social media quickly are becoming universal in modern medical practice. Data sharing, online reviews and ratings, and digital privacy concerns likely will become a part of most every physician's practice, regardless of his or her use of social media. The widespread use of social media in the United States brings unprecedented connectivity that opens new horizons for physicians, ranging from interactions with patients, to communication with peers and the public, to novel approaches to research.

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What Message Are You Sending?

- What about personal use?
  - What about when I am off the clock?
  - Does it really matter what I post?
  - Social media allows me to vent my frustrations!
  - Do you even know what you are posting?

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Nursing/Medical Board Opinion

- 73% of State Boards would investigate a clinician for posts depicting intoxication
- 40% would investigate posts just involving alcohol.

Zimlich, Rachel, RN (2013). State medical boards offer insight on avoiding investigation over social media use, *Medical Economics*

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Keep it Professional

- Social media impacts your professional reputation.
- Social media impacts your patients' perception of you.
- Your posts can strengthen a plaintiff's lawsuit against you and influence the jury's beliefs about your care.

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Assessment Errors

Failure to:

- Gather proper information
- Recognize the significance of the information gathered

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Maternal Early Obstetric Warning System (MEOWS)

Table 3
A modified early obstetric warning system

Physiologic Parameters	Yellow Alert	Red Alert
Respiration rate	21–30	<10 or >30
Oxygen saturation		<95
Temperature	35–36	<35 or >38
Systolic blood pressure	150–160 or 90–100	<90 or >160
Diastolic blood pressure	90–100	>100
Heart rate	100–120 or 40–50	>120 or <40
Pain score	2–3	
Neurologic response	Voice	Unresponsive, pain

Friedman, A (2015). Maternal Early Warning Systems, Obstetrics & Gynecology Clinics of North America, 42,2: 289-298

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Normalizing the Abnormal Assessment

- **<u>Hypoxemia</u>**
  - Oxygen saturations are below 95%
    - "She is just sleeping"
    - "I just gave her some IV pain medicine; this is expected."
    - "She was so stressed, and now she's finally relaxed."
  - Inability to obtain SpO2-faulty equipment vs critically low value
  - Increased respiratory rate-explained as anxiety

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Normalizing the Abnormal Assessment

- **<u>Tachycardia</u>**
  - Heart rate >120 explained as pain and anxiety
  - Tachycardia documented, but Cardiac Assessment documented as "WNL"

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Normalizing the Abnormal Assessment

- **Hypotension**:
  - Assumed to be a normal physiologic change in pregnancy- "she is hypotensive because she is pregnant"
  - "She runs low blood pressures normally"
  - "That is expected when you get an epidural"
  - "The baby looks fine"

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Normalizing the Abnormal Assessment

- **Hypertension**:
  - "But she feels fine"
  - "She has chronic hypertension, this is her norm"
  - "She is in pain"
  - 'She just had a fight with her mother"
  - "She has too many visitors in the room"
  - "Her pre-eclampsia labs are normal"

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Abnormal Assessment Parameters

- Are hospital-specific and population-specific normal parameters defined?
- What should the RN do when assessment parameters fall outside of normal values?
- How are abnormal parameters documented?
  - Maternal HR=122, documented as WNL

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Failure To Communicate

Failure to communicate *significant information* or *changes in a patient's status* to supervisor, or physician

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Communication: General Principles

- Know the communication standards within your facility
- Recognize factors effecting communication (staff stress, emergency situations, technical/clinical complexity)
- Enlist *Chain of Command* when indicated

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Speaking with a Physician over the Phone

- Clear communication is crucial *and expected*
- Failure to report significant changes can lead to a negligence charge
- Telephone orders may only be taken by an RN, confirmed for accuracy and should be charted promptly
- Identify & report *significant* information especially when there has been a *change in condition*

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Speaking with a Physician over the Phone

- Question ANY order that is unusual or unclear
- Do not carry it out until you verify that it is correct
- Read back what you have written; not "repeat back what you heard"
- Document date/time of contact, what was discussed, orders received (if any), and any changes in the plan of care

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Nurse-Physician Communication

- Communication is *relationship driven*
  - Good communication *depends* on trust
- Don't be afraid to **speak up**
- Be aware of common pitfalls:
  - "I'll wait until later to call"
  - "My accent makes me hesitant"
  - "I don't want to bother him"
  - "I'm afraid of being yelled at"
  - "I don't want to seem incompetent"

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Factors That Can Impede Competent Documentation

- High Risk situations
- Urgency in decision process
- Staff stress
- Technical competence
- Clinical competence

Planning Errors

Failure to:

- Coordinate the Interdisciplinary Plan of Care (IPOC)/ specialties
- Anticipate need

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Example: Uterine hyperstimulation

- Failure to document discontinuation or adjustment of oxytocin; especially in the presence of a Category II/III pattern
- Failure to document initiation of corrective measures aimed at optimizing perfusion

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Intervention Errors

Failure to:

- Care for a patient in a safe, effective manner
- Implement the six rights of medication administration
- Implement patient safety measures (e.g. patient identification)

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Rules of Joint-Action

- Liable for inappropriate delegation of tasks to a subordinate
  - RN to LVN or CNA
  - Charge RN to staff RN

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Other Areas of Potential Risk:

Contributory Negligence

- Not all accidents that occur in the healthcare setting are the result of provider negligence.
- In order to use the full protection of this law, the healthcare provider must document non-cooperative patient behaviors

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Examples of Non-Cooperative Behavior

- Leaving AMA
- Refusing medication
- Failing to follow the IPOC
- Refusing to follow strict bed rest orders
- Bringing unauthorized items into the hospital
- Failing to give a complete health history
- Family members tampering with equipment

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Standard of Care (SOC)

"What a reasonable and prudent nurse would do in a similar situation and in a similar environment"

- SOC is different for each specialty of nursing
- It is the essence of care, what you will be judged against
  - Know your facility policies, protocols and procedures

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Malpractice & Liability

- **DUTY** - One who undertakes care and treatment of a patient
- **BREACH OF DUTY** - Deviation from the accepted standard of care
- **CAUSATION** - Link between action and injury

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Malpractice & Liability

DAMAGES - Monetary award to the plaintiff

- Economic
  - Out of pocket, loss income, medical costs
- Non-Economic
  - Pain & suffering ($250,000.00 limit in CA)
- Punitive
  - Punishable to the defendant for malicious misconduct
  - Not covered by insurance
  - No limit

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Strategies to Decrease Liability

- Utilize practice standards
- Adopt standardized terminology
- Do case reviews
- Keep a copy of educational competencies

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Principles of Documentation
Who Can Document?

- Only *"authorized individuals"* may make entries in the medical record. (Usually credential staff, defined by organizational policy, and have received training in fundamental documentation standards.)
- Link each entry to the patient
  - correct patient
  - stamper plate ID
- Students, Orientees
  - Do they need a counter-signature?

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Timeliness of Entries

- Entries should be made as soon as possible after an event or observation is made
- Noting date <u>**AND**</u> time
- Pre-dating &/or back-dating is **unethical & illegal**

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Computerized Documentation

- Be aware of *Privacy* & *Confidentiality* laws
- Utilize computer safeguards
  - Log off when you walk away
  - Use strong passwords
- Be ethically responsible
  - "Need to know"
- Know the difference between public vs. private information
- Be aware of the audit trail

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Documentation "pearls"

- *Be specific* and *objective*
- *Address all fields – fill-in or VOID spaces*
- *Use approved abbreviations and avoid slang*
- *Write/type legibly*
- *Avoid continuous entries*
- *Avoid contradictions*
- *Document any change in condition*
- *Perform signatures/witness where indicated*
- *Validate patient ID & that informed consent occurred*
- *Document specific admission/discharge instructions given to patient*
- *Entries must be appropriate*
- *Make corrections & amendments using approved method*
- *Keep up to date (MAR, orders, problem list)*

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Documentation Example

Note reason for visit:

- Patient's chief complaint
- Onset & duration of symptoms
- If the patient did anything at home to relieve symptoms (e.g. take medication, lay down, etc.)

"patient c/o stomach pain, diarrhea and headache for two days. Has taken aspirin (2 tabs each time) on three occasions in last 48 hours"

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Documentation Example

Note:
- Allergies
- Current medications
- Names of other physicians that the patient is currently seeing
- Begin generating a *problem list* off the prenatal record & intake questions

" Patient states allergy to PCN. Currently taking flagyl for vaginosis, atenolol for MVP grade II. Cardiologist is Dr. Green."

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Avoid Informal Discussions of the Events

- Avoid making personal/anecdotal notes.
- Avoid discussion with patients and/or "concerned family members"-these are discoverable.
- Attorney-client privilege applies to communications with your Risk Manager.
- Use Incident Reports (Evidence Code Section 1157)

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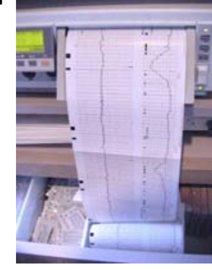
Principles of Documentation – Fetal Monitoring

- Document interventions for Category II/III tracings
- Be vocal about avoiding delays when urgency is a factor
- Involve the patient in the decision
- Encourage good communication between your team, don't assume *"they should know…."*



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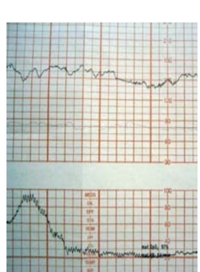
Principles of Documentation – Fetal Monitoring



- Baseline rate: Normal, Tachycardic, Bradycardic
- Variability: Moderate, Marked, Minimal, Absent, Sinusoidal
- Decelerations: Variable, Late, Early, Prolonged, Recurrent
- Accelerations: present or absent
- Periodic or Non-periodic changes (with Ucs)
- Uterine Tachysystole

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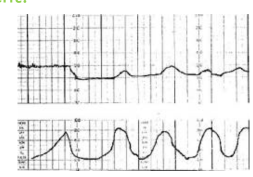
Test your Knowledge – Fetal Monitoring Documentation

- Baseline: normal, bradycardia, tachycardia
- Variability: mod., min., absent, marked, sinusoidal
- Decels: present or absent?
  - If present, what type?
- Accels: present or absent?
- UCs: present or absent?
  - If present, regular or irregular?
- Periodic or Non-periodic changes?



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Your patient has an adverse outcome…..what now?

- Don't avoid the patient or family
- Inform them as soon as possible
- Use language they can understand
- Get together with your team and plan on who will explain what occurred, but do not offer "guess work"

51

Dealing With Their Family

- Show empathy & concern
  - Doing so is not an admission of guilt
- Use common sense when handling a "difficult" family member
- Remember *your patient's rights* when responding to family
  - Only provide information that the patient has authorized to be shared

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If You are Involved in a Claim

Don't:

- Panic if a complaint or accusation is made against you
- Admit fault or become confessional
- Take patients "into your confidence"

- If it's not your hospital lawyer …….do NOT talk to them
  - Have them contact your facility's risk manager

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Incident Reporting

- Use incident reports (Evidence Code Section 1157) to document unusual or unplanned/unexpected events
- Document a thorough account without leaving out important facts
- Do not speculate
- Complete as soon as possible
- Answer the who, what, where, when & why

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Supportive Resources

- National Standards - ACOG/AWHONN
- Community Standards – Regional Perinatal Systems
- Institutional Standards:
  - Risk Management
  - Policy & Procedures
  - Standards &/or Guidelines of Care
- Malpractice Insurance Companies
- Books/Journals/Classes

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Policies & Procedures

- Know your organization's policies & procedures, especially ***Chain of Command***
- Know where to find them at 2:00 am!
- Know how to notify your hospital Risk Manager of adverse outcomes or potentially litigious events

Policies and Procedures

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Summary - Assessment

- Carefully question the patient
- Take vital signs at appropriate intervals
- Make frequent observations
- Re-examine a patient if the initial assessment was incomplete or inaccurate
- Recognize the significance of the information gathered and know when that information must be relayed to others

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Summary - Plan

- Individualize a care plan for each patient
- Get the right people involved to meet the patient's specific needs
- The plan may need to be modified with changes in the patient's condition

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Summary - Intervention

- Carry out the plans derived from your assessment
- Implement physician orders
- Implement nursing orders
- Be a patient advocate

59

Summary - Evaluation

- Evaluate the plan of care every shift or whenever there is a change in the patient's condition
- Don't be afraid to change the plan

60

Practicing within the standard of care and knowing your facility's policies & procedures is your best asset to a long and successful career.

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