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Failure to Rescue: The LNC Role

Your role as a legal nurse consultant in helping an attorney with a failure to rescue case might involve explaining the function of a rapid response team.

This is Pat Iyer with *Iyer's Insights*, one of the twice weekly shows of Legal Nurse Podcast.

In the previous podcast, 342, Sandra Nichols discussed some of the reasons why a nurse might be forced to go before the Board of Nursing. One of the reasons relates to clinical judgment. Certainly, in addition to Board actions, a nurse might find himself or herself in a courtroom because of decision making in a failure to rescue case.

Let's take a step back and find out how rapid response teams developed. The concept of a rapid response team originated with a critical care nurse from New Zealand who recognized the need to bring resources to the bedside of a patient whose condition deteriorated before more serious events could occur. I met this nurse in Japan when she and I presented programs at the same International Council of Nurses conference.

Purpose of Rapid Response Team

The rapid response system's purpose is to react to early warning signs before the patient's condition completely deteriorates into a cardiac arrest. These systems are designed to rescue deteriorating patients. But they have a broader function. The system's team also reviews what happened. The patient safety focus leads them to collect and analyze data from events to improve prevention of future events. The team's goal is to reduce the need for their services.

Composition of Rapid Response Team

An attorney may ask you to explain these teams. Here's what you need to know.

The composition of rapid response teams varies from hospital to hospital. A team typically consists of 2-3 people who are assigned to flexible responsibilities within the facility. The team may consist of respiratory therapists, physician assistants,

nurse practitioners, critical care nurses, intensivists (critical care doctors), hospitalists (physicians employed within a facility to provide inpatient care) or residents. The team's role is to

- assess and stabilize the patient,
- assist with communication with the attending physician,
- educate and support the nursing staff and family, and
- assist with transfer to another level of care, if needed.

The rapid response team brings people with critical care expertise to a non-critical care nursing unit. The professionals on the team have differing backgrounds and perspectives so they can coordinate care. Their common goal is to stabilize the patient by addressing the immediate early warning signs and to determine how the patient's care should be changed. But they do not take over the care of the patient for the rest of the admission. That responsibility remains with the attending physician or hospitalist.

Helping the attorney understand a failure to rescue case

Your legal nurse consulting analysis of the failure to rescue case may focus on:

- What were the risk factors for a clinical deterioration?
- What were the clinical signs that the patient was deteriorating?
- Was there a long gap in documentation before the patient was “suddenly” found unresponsive?
- Did the facility have a rapid response team?
- How much time elapsed before the nurse or other provider called the rapid response team?
- What did the team do?
- Was the patient transferred to the critical care unit after the team arrived?
- How much time elapsed before the critical care unit accepted the patient? (This might relate to needing to clear a bed.)



So much of care is provided in ambulatory care settings. Surgeries that used to require a week of hospitalization are done on an outpatient basis.

I had an opportunity a few years back to teach a workshop for attendees at the American Association of Ambulatory Care Nurses.

The cases I pulled together to teach the nurses led to me writing a book called *Safeguard Your Ambulatory Nursing Care Practice*. Don't let the title lead you to think this is only of value to nurses who work in outpatient areas. The text is essential for legal nurse consultants who evaluate medical records.

This text highlights the legal risks of nurses who work in a wide variety of ambulatory care settings: clinics, medical offices, telephone triage and other settings. You will learn how to analyze ambulatory care medical malpractice cases.

This book is packed with vital information about the risk management in ambulatory care. You will discover

- Why people file lawsuits against healthcare providers
- How an ambulatory care lawsuit proceeds
- Common allegations against nurses in ambulatory care
- High risk incidents
- How ambulatory care lawsuits are defended
- Legal doctrines pertinent to ambulatory care nurse administrators

Order this book at the show notes for podcast.legalnursebusiness.com. If you use the code Listened in the coupon box, you'll receive a 25% discount.

The LNC's Analysis of a Failure to Rescue Case

Let's look at a case decided in September 2019. A sixty-eight-year-old woman went to a restaurant part of the Shoney's chain. She tripped on a wrinkle in the

restaurant carpet and fell hard on her shoulder, fracturing her humerus. The woman was admitted to the hospital, where 2 days later the orthopaedic surgeon performed a surgical repair. That evening a hospital nurse noticed a change in her condition – decreased respiration and signs of shock. The nurse called the rapid response team, who gave her Narcan and Seraphine.

When the patient was still not stable an hour or so later, the team transferred her to a telemetry unit so that she could be more closely observed. Before she was transferred, she suffered a cardiopulmonary arrest. She had several more overnight, which resulted in a catastrophic anoxic injury. She died three days later when her family agreed to withdraw life support.

The lawsuit was against 2 defendants: Shoney's for improperly placing and maintaining the carpet, and the hospital, claiming the nurses failed to monitor the decedent's decline, appreciate the impending cardiopulmonary arrest and intervene to advise the doctors.

The two cases were separated. Shoney's denied fault for the fall, explaining the wrinkle in the mat existed only a moment before she fell. The hospital's defense contended the nurses properly monitored the patient and reported her condition. The jury did not find either Shoney's or the hospital at fault.

Legal nurse consultant's analysis of failure to rescue case

Could this death have been prevented? Were there early warning signs that were overlooked?

Many failure to rescue cases are preventable with early intervention. Several medical studies have shown that there are early warning signs that help identify patients whose conditions are deteriorating – minutes to hours before a serious adverse event occurs. In many cases, there is enough time to identify patients who are at risk for an adverse event, and to intervene.

There are observable signs of deterioration that develop within 6-8 hours before a cardiac arrest. Sixty to ninety five percent of cardiac arrests are potentially avoidable depending on where the patient is receiving care. Up to 80 percent of people who have a cardiac arrest do not survive.

Early warning signs of clinical deterioration

This is an easy way to remember the early warning signs. Use the ABCCCs:

Airway:

- The patient may have a blockage in the airway.
- The patient's breathing may be noisy or labored.
- There may be a problem with a tracheostomy tube.

Breathing:

- Any difficulty with breathing is a warning sign.
- The patient may be breathing less than 8 breaths per minute.
- The patient may be breathing more than 25 breaths per minute.
- The patient's oxygen saturation may be 90 or less, despite receiving oxygen.

Circulation:

The first C stands for circulation. These are early warning signs:

- A pulse of 40 beats per minute or less
- A pulse of 120 beats per minute or more
- Low blood pressure with the systolic value less than 90
- Urine output of less than 50 cc over 4 hours

Conscious state:

The second C stands for conscious state:

- There is a sudden change in conscious state, or the patient cannot be awakened.

Concern:

The last C stands for concern:

- This refers to the situation in which a healthcare provider having intuition or a gut feeling that there is something wrong with the patient. This is sometimes referred to as "the staff are worried about the patient".

Medical Causes of Early Warning Signs of Clinical Deterioration

There are several medical conditions which can cause early warning signs of a change in the patient's condition. These include

- Acute respiratory failure
- Acute cardiac failure
- Acute changes in consciousness
- Hypotension
- Arrhythmias
- Pulmonary edema
- Sepsis

Liability Theories in Failure to Rescue

Consider these possible liability theories.

1. Failure to recognize the woman's deteriorating condition

The healthcare provider might have

- lacked experience or skills
- been unwilling to request help from a more experienced or higher credentialed physician
- put too much emphasis on the diagnostic studies instead of looking at the patient
- not have understood or conveyed the urgency of the situation
- lacked knowledge
- pursued the wrong diagnosis

2. Barriers to escalating the attention the woman needed

The healthcare provider may have

- not understood how to get help for the patient
- not known when to request help
- not have senior healthcare providers available
- been fearful of being chastised
- hit resistance from a senior physician

Legal Nurse Consultant Assistance with Failure to Rescue Case

Your role as a legal nurse consultant helping an attorney with a failure to rescue case could encompass:

- Explaining how the healthcare system operates
- Describing the cascade of medical events
- Creating a timeline
- Suggesting items to obtain during discover
- Preparing questions for depositions
- Securing expert witnesses
- and more

In the Shoney's case I described, the jury concluded the nurses acted appropriately. One of the key elements they would have looked at was the events leading up to the need for the rapid response team and what occurred after the team finished and before the patient could be transferred. That critical time frame was key in the clinical outcome.

Cases like this with catastrophic injuries deserve the detailed analytical skills of legal nurse consultants. You can make a difference!

Be sure to get your copy of my book, *Safeguard Your Ambulatory Nursing Care Practice* at the show notes for this podcast. You'll find it at podcast.legalnursebusiness.com. It is a terrific primer for LNCs.

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