Legal Risks in Phlebotomy

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Disclosures

Relevant Financial Relationship(s):
Nothing to Disclose

Off Label Usage:
Nothing to Disclose
Agenda

- Brief overview of malpractice
- Overview of legal standards for phlebotomists
- Personal liability
- Brief overview of types of damages
- Overview of types of errors that can occur
- Overview of how errors can be reduced

Cost of Malpractice Claims

- Verdict or settlement
- Trial and discovery costs
  - Money
  - Time
- Significant personal and emotional impact on care providers involved in lawsuit
**Malpractice = Medical Negligence**

Plaintiff must establish four elements of cause of action

- **Duty**
  - Standard of care
  - Breach of that duty
  - Connection between breach of the duty and the harm
  - Harm

**Duty**

- Care provider must possess/exercise degree of learning and skill ordinarily possessed and exercised by care providers in good standing acting in similar circumstances
- In other words, care provider must practice within “standard of care.”
What is the Standard of Care in Phlebotomy?

- Textbooks, authorities, societies, or facility’s SOPs / policies
- Includes things like:
  - Patient identification
  - Getting the right specimen for the test ordered
  - Using the right technique
    - Lowest possible angle
  - Patient safety (if faint or light-headed)
  - Universal precautions

No Duty

- Pietrunti v. Island Diagnostic Laboratories (1998)
- Patient’s mother sued for injuries
  - Told phlebotomist she became ill at the sight of blood
  - After draw, phlebotomist left the room
  - Mother calmed child and placed band-aid on finger
  - Collapsed while walking toward waiting room and broke her leg
Pietrunti v. Island Diagnostic Laboratories

- Court found no negligence
  - Phlebotomist had no duty to the mother
  - Unreasonable to expect the phlebotomist to protect her from falling and breaking leg
  - No evidence that phlebotomist required mother to stay in the room
  - No evidence plaintiff was on verge of fainting

Breach of Duty

- Did the phlebotomist breach that duty?
- Was a standard of care not followed?
  - Was a policy violated?
  - Wrong procedure?
  - Mislabeled?
  - Privacy breach?
  - Use wrong equipment?
  - Did hospital fail to supervise or train staff?
No Breach of Duty

  • Arterial blood draw
  • Patient suffered medial nerve injury
  • Plaintiff claimed unlicensed phlebotomist did the procedure incorrectly
    • Draw from elbow, when historically done at wrist
  • Court found no evidence of breach of any standard of care
    • Even when everything is done correctly, injury can result

Causation

• Definition:
  • More probable than not that injury resulted from deviation from the standard of care
  • No liability without proof of causation
Failure to License Not Cause

  - Arterial blood draw
  - Patient suffered medial nerve injury
  - Phlebotomist not licensed
  - Plaintiff claimed lack of license was per se negligence
  - Court disagreed, finding the licensing violation was not the equivalent to a failure to use due care

Causation Not Established

- Mengelson v. Ingalls Health Ventures (2001)
  - Patient requested draw in right arm
  - 3 attempts to draw from left arm
  - Patient had pain and left work early next day
  - 4 weeks of burning pain
  - 3 months later in car accident – neck injury
  - Diagnosed with reflex sympathetic dystrophy
Injury

• If there is no injury, there is no basis for a lawsuit
• Injury usually must be physical
• Normally no recovery for purely emotional injury

Fear

• Lopresti v City of Malden (2001)
  • Bank and hospital sponsored cholesterol screening
  • Phlebotomist drew blood with previously used needle
  • Negative test results to monitor for infection
  • Non injury – no damages
Distress

• In re Needle Cases (2003):
  • Phlebotomist routinely reused needles
  • 3600 patients notified
  • Patient did not have blood drawn, only tested from another facility
  • No claim for emotional distress or battery

Compensable Harm

• Nerve damage
• Vessel damage
• Subcutaneous hemorrhage
• Dizziness
• Death
Types of Damages

- Actual expenses
  - Medical
  - Wages
  - Special accommodations
- Pain and suffering
- Punitive damages
  - Reckless / wanton behavior

Personal Liability

- Respondeat Superior
  - an employer is liable for the negligent act or omission of any employee acting within the course and scope of his employment if:
    - The injury occurred on the job;
    - The employee was hired to perform the activity; and
    - The employer benefited from the activity.
Acts Outside the Scope of Employment

- Wanton disregard of policies:
  - Drawing specimen at home for a friend
  - Drawing specimen while intoxicated
- Criminal acts:
  - Stealing drugs and filling the syringes with saline
  - Assaulting a patient
- Respondeat superior does not cover independent contractors
  - Vicarious liability

Wanton Disregard

- Walker v. Humana Medical Corp (1982):
  - Blood drawn on hospital patient without checking identification
  - Patient received wrong blood transfusion
    - A negative versus O positive
  - Jury found the phlebotomist “took blood without making any effort to determine [the correct patient]”
    - Did not check armband
Maryland Case (2007)

- Mother brought 6 year old child to clinic
- Medical director ordered blood draw
- Student phlebotomist accidentally stuck herself with needle, then drew child's blood
- Student denied it, but eventually admitted to it

Maryland Case, Cont’d

- Student was Hep C positive
- Child was tested for one year, but did not test positive
- Case settled for $50,000
Evans v. Thrasher, University Hospital, and Quest Diagnostics

- Evans was in hospital from a gunshot
- Placed on more secured floor because assailant was still at large
- Thrasher, dressed as woman, entered Evan’s room and sexually assaulted him
- Court found Thrasher’s behavior was not anticipated
  - Outside course of employment

Doe v. Guthrie Clinic (NY 2014)

- Patient sought treatment for a sexually transmitted disease
- Nurse at the clinic sent taunting texts to patient’s girlfriend about the STD
- Patient sued clinic
- Clinic claimed it was outside the scope of nurse’s employment
Ross v. American Red Cross (Ohio, 2014)

- Blood donor sued Red Cross, alleging:
  - Improper insertion of needle
  - Causing injury to a nerve
  - Failure to provide appropriate follow-up care

- Facts:
  - Phlebotomist inserted needle in left arm
  - Patient cried out, so phlebotomist withdrew needle, bandaged arm, and applied ice

Ross v. American Red Cross, cont’d

- Donor allowed phlebotomist to draw from right arm
- Donor called Red Cross the next day
  - Received further instructions on caring for nerve irritation
- Court did not find evidence of breach of standard of care
Kay v. American National Red Cross (Ohio, 2012)

- 17 year old gave blood at high school blood draw
- Phlebotomist attempted to draw blood
- Blood began running down donor’s arm
- Phlebotomist was unable to remove the needle, so she left donor to find someone who could help

Kay v. American National Red Cross (Ohio, 2012)

- Another phlebotomist was able to remove the needle, but caused significant pain to donor
- Donor became dizzy, was unable to keep her eyes open, but was told to hold gauze over her arm
- Expert testified there were two deviations from standard of care.

• Phlebotomist left tourniquet on 80 year-old patient’s arm for about 10 minutes to answer a phone call.
• Patient’s arm was swollen and had turned colors.
• Patient developed nerve problems.

Baptist Healthcare Systems, Inc. v. Golda Miller, et al

• Jury awarded $154,000 in injuries
• Also found Plaintiff partially negligent
  • Reduced damages to $100,100

• Blood donor sued Red Cross alleging she developed complex regional pain syndrome as a result of negligent phlebotomist.


• Plaintiff alleged phlebotomist:
  • Improperly inserted the needle
  • Wiggled the needle
  • Stuck her more than once
  • Left her unattended during the draw, even after her arm turned blue

- Evidence:
  - Red Cross knew phlebotomist lied on her application
  - Red Cross ignored staff complaints about phlebotomist’s technique
  - Phlebotomist on probation at time of draw
  - Multiple donors had complained
  - Red Cross did not make any effort to retrain

Mislabels
Johnson v. Methodist Hospital  
(Texas, 2003)

- 8 months pregnant patient wanted to change doctors
- Goes to the hospital draw site for routine blood work
- Physician calls her to tell her she is HIV positive
- Patient goes into labor within 24 hours

Johnson v. Methodist Hospital

- Patient and baby are treated with AZT
- Next day, patient told she was not HIV positive
- Specimen had been mislabeled
- Lab settled for $20,000
- Verdict against hospital for $50,000 (mental anguish) and $2,000 for physical injuries
- Judge granted JNOV
Minimizing Risks

• Hiring
  • Employment Checks
  • Background Checks
Training

• Proper patient identification
  • Confirming identity with patient
  • Using barcodes on inpatients

• Proper labeling
  • Compare tubes to labels
  • Print labels at bedside
  • Label tubes in presence of patient
  • Procedure for correcting discrepancies before specimen is drawn

Training

• Collection Practices
  • Phlebotomists should understand what to do in the following events:
    • Difficult draw
    • Patient becomes ill
    • Hematoma
    • Excessive pain
  • Ensure no allergies to supplies to be used
Training

- Collect appropriate sample and amount
- Verify patient met collection criteria
  - Fasting
  - Time considerations
- Appropriate site
- Appropriate equipment
- Proper prioritization, e.g. STAT
- Proper handling of specimen

Proper Supervision

- Fully investigate complaints
  - Techniques criticized by colleagues
  - Patient complaints
  - Provide retraining when necessary
- Review mislabels to determine if employees are skipping steps or not following policies
Proper Supervision

- Annual Competency Assessment
- Review
  - Policies standard operating procedures
  - Procedures to ensure correct labeling
  - Proper use of personal protective equipment
  - Proper use of equipment
- Hands on training

Proper Supervision

- Certification through outside agencies
- Licensure when required
Why is documentation so important?

- Personal testimony is subject to doubt
- Your documentation is a reflection of your practice
- You (and your lawyers) need information to defend your care
  - Medical record
  - Administrative documentation
Proper Documentation

• Follow documentation guidelines
• Complete (no blanks or gaps)
• Avoid excessive detail
• Stay neutral and objective -- whether note pertains to patient, another care provider or an incident/error
• Correct spelling/grammar

QUESTIONS

Online chat:
Submit through CenturyLink’s chat box

Phone line:
-Press *7 to unmute line
-Press *6 to remute line
Questions & Discussion

Next Upcoming Webinar

Patient Satisfaction:
Measuring Patient Experience and Customer Service

Presented by: Jennifer Storlie
November 28, 2018