It Starts With Documentation: Managing Your Legal Risks in Long Term Care

Presented by

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Disclosures

- Dr. Collins discloses that she works with both plaintiff and defense firms and receives payment as an Expert Witness
- Dr. Collins has no commercial disclosures relevant to this topic

Today's Discussion

- Describe the physician orders and care areas that frequently lead to concerns in the medical record
- Understand documentation required to support evidenced-based care in accordance with the standard of care
- Discuss how to implement a minimum of three strategies to improve documentation and patient care

Two Sides of the Coin

Facility Advertisement:

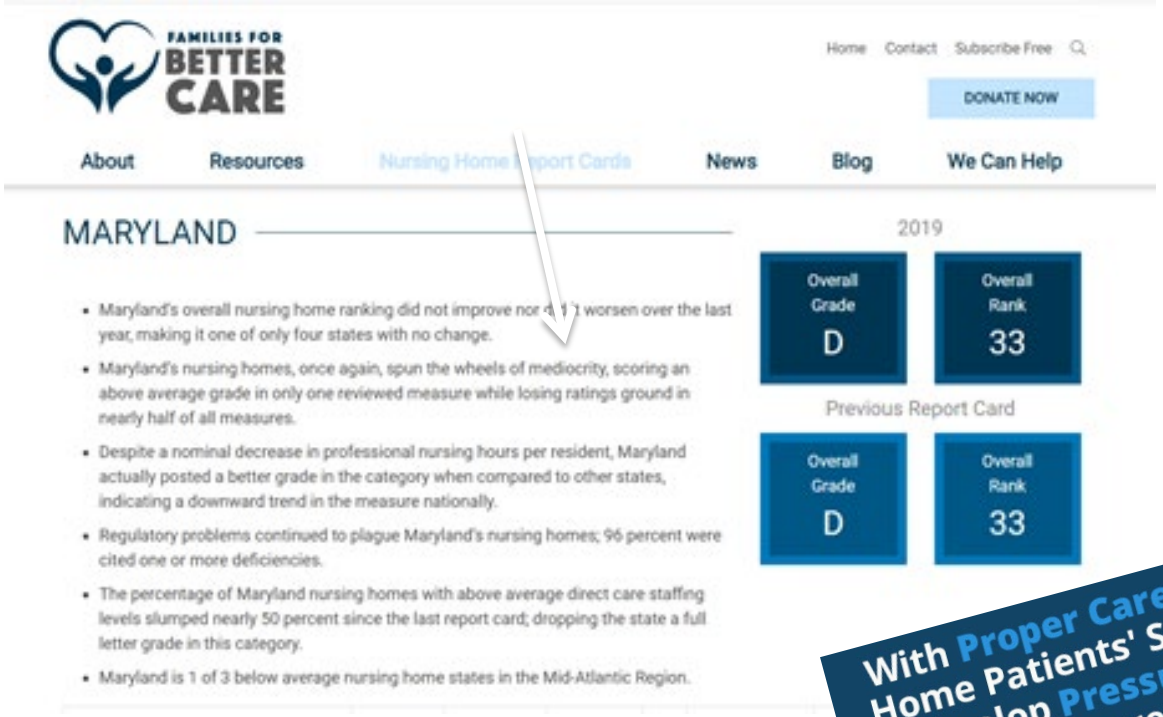
A state-of-the-art facility that provides cutting edge care provided by caring, knowledgeable and well-trained professionals

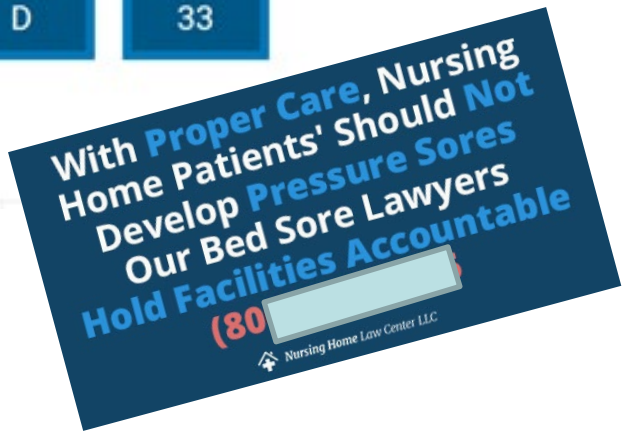
Plaintiff Attorney Ad:

The tragic truth is that the healthcare industry, for the most part, behaves as just that: an industry that houses our ill and infirm loved ones at the lowest cost possible.

This means minimal qualifications, inadequate staffing, insufficient training and low wages and high turnover.

Maryland is 1 of 3 Below Average Nursing Home States in the Mid-Atlantic Region





millerandzois.com/nursing-home-negligence.html

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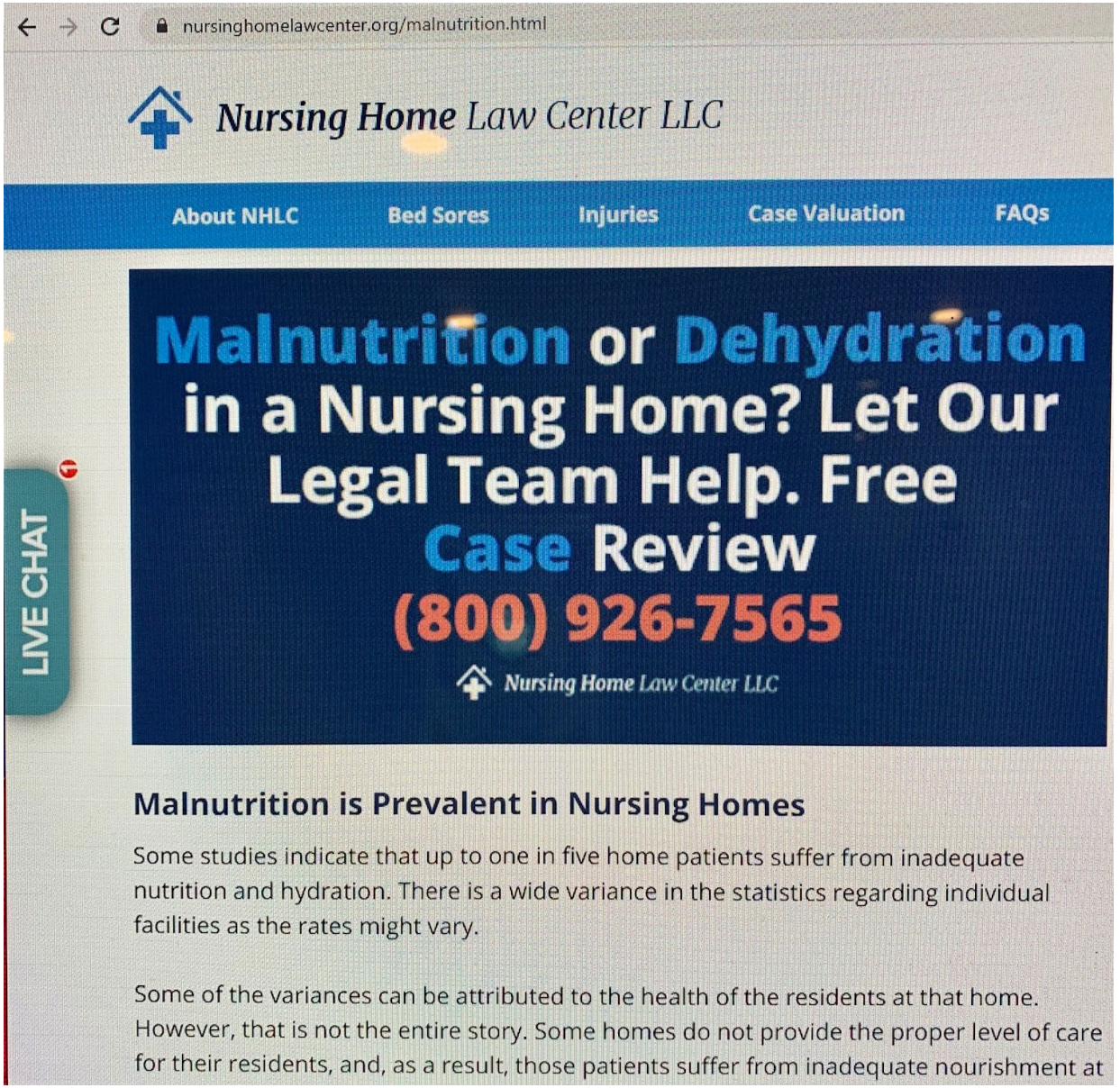
But the reality is just tough to find a nursing home facility that you can feel confident in at this critical juncture of life. Bad care is ubiquitous for far too many of the 25,000 residents of a certified nursing home in Maryland.

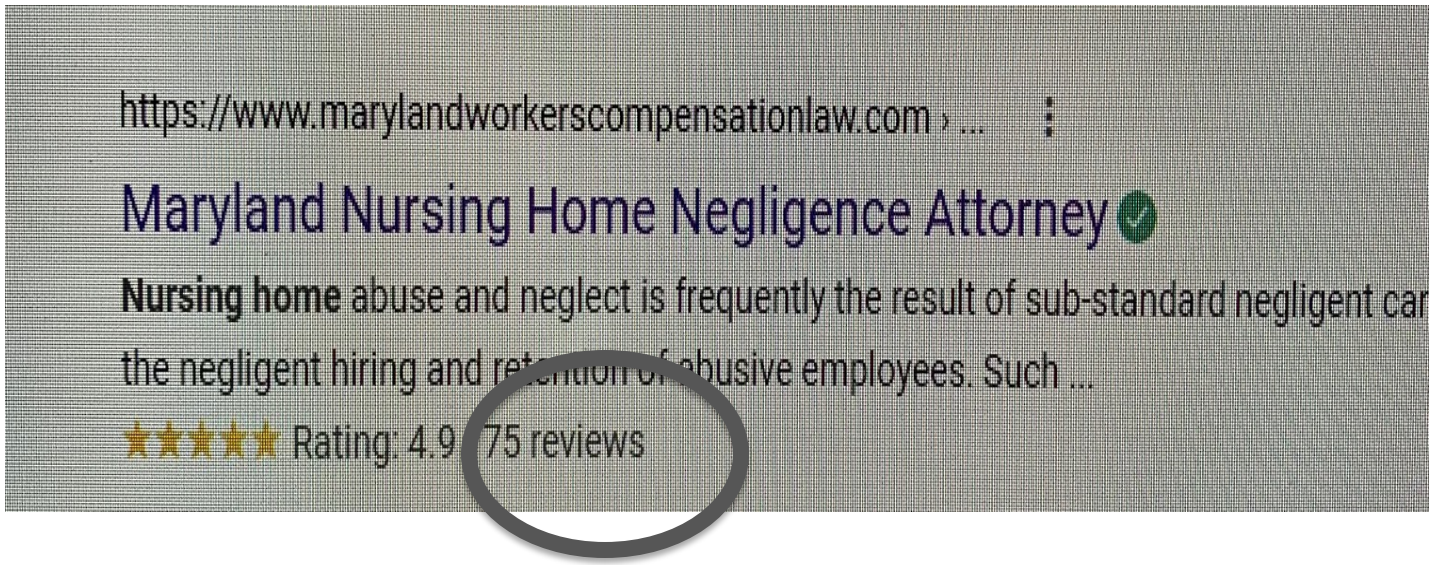
> *The vast majority of nursing homes in both Maryland and Washington, D.C. are cited for the same deficiencies year after year.*
> *- Report: State of Nursing Homes in Maryland & Washington, D.C.*

Nursing home lawyer attorneys like us are not the only ones sounding this alarm. The federal government's Government Accountability Office underscores this sentiment, finding a widespread "understatement of deficiencies" when it comes to this nation's nursing home situations. Incredibly, there is clear evidence that nursing homes as actually getting **worse**.

Yes, nursing homes are frequently inspected. But there is only so much that inspectors can do. Our Maryland nursing home attorneys hear reports of **malnutrition and dehydration**, **bedsores**, prescription abuse, and physical abuse of nursing home residents that go overlooked.

Where is our nursing home care the worst in Maryland? Facilities in Baltimore and Prince


nursinghomelawcenter.org/malnutrition.html
Nursing Home Law Center LLC
About NHLC
Bed Sores
Injuries
Case Valuation
FAQs
Malnutrition or Dehydration in a Nursing Home? Let Our Legal Team Help. Free Case Review
(800) 926-7565
Nursing Home Law Center LLC
LIVE CHAT
Malnutrition is Prevalent in Nursing Homes
Some studies indicate that up to one in five home patients suffer from inadequate nutrition and hydration. There is a wide variance in the statistics regarding individual facilities as the rates might vary.
Some of the variances can be attributed to the health of the residents at that home. However, that is not the entire story. Some homes do not provide the proper level of care for their residents, and, as a result, those patients suffer from inadequate nourishment at


https://www.marylandworkerscompensationlaw.com › ...
Maryland Nursing Home Negligence Attorney
Nursing home abuse and neglect is frequently the result of sub-standard negligent car
the negligent hiring and
busive employees. Such ...
Rating: 4.9 / 75 reviews

What does litigation involve?

- Significant commitment of time and resources
  - Bringing attorney up to speed
  - Search of files, records, including electronic
  - Responding to discovery requests
  - Preparation for deposition testimony
  - Providing deposition testimony
  - Preparation for trial, if necessary

What does litigation involve? (cont'd)

- Longer process than seems appropriate or necessary
  - Time between filing of complaint and trial will be at least months, more likely years
  - Discovery process may be protracted, especially with multiple parties
  - Process is dependent upon schedule of attorneys, parties, and overtaxed courts

What does litigation involve? (cont'd)

- Possible retention of expert witness
  - Need for "expert":
    - To evaluate and confirm provider's conduct
    - To explain technical aspects to jury
  - An expert may be essential if opposing party has retained one
  - Some cases become "battle of the experts"
  - Expert must be credible, articulate, personable

Trial – Unpredictable Roll of the Dice

- Composition of the jury
  - Sympathetic jury may simply wish to compensate a perceived victim, or to punish a defendant
- Evidentiary rulings
- Legal rulings

Chain of Events

- Unrealistic Expectations
- Unmet Needs
- Disappointment
- Dissatisfaction
- Allegations

LITIGATION

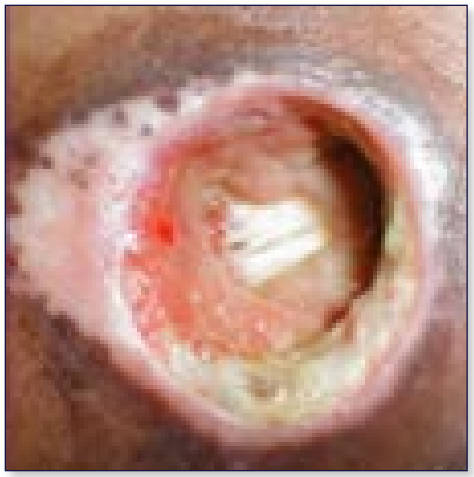
What Must Be Proven

- An unwarranted departure from the generally accepted standard of care that results in injury
- Unwarranted = Not justifiable

Standard of Care

- The care that a dietitian in good standing with similar experience and education would ordinarily exercise under similar circumstances.
- Sometimes stated as what would be done in a similar facility across town.

Nutritional Conditions Driving Lawsuits



- Pressure injuries
- Malnutrition
- Dehydration
- Choking
- Poor outcomes e.g. critical care
- Bariatric surgery
- Neonatal issues

Violations in Standard of Care

Did not:

- Identify nutritional risk
- Prevent weight loss, dehydration, wounds
- Treat in a timely manner
- Use appropriate supplements, vitamins, treatments, etc.
- Provide adequate nutrition and hydration
- Follow MD orders
- Communicate and document adequately

Violations in Law

- Dietetics practice act
- Neglect and abuse
- Fraudulent documentation
- Fraudulent billing

Three Arms Guiding the Practice of Dietitians

- Code of Ethics
- Standards of Practice and Standards of Professional Performance (SOP/SOPP)
- Process for Recertification
  - Professional Development Portfolio With Essential Practice Competencies

The RATS of Malpractice

- **R**ecords
- **A**ttitudes
- **T**raining
- **S**tandards

Common Documentation Issues

- Inconsistent information
  - Height and weight
  - Meal intake in notes does not match consumption records
  - Ability to feed self
- Incomplete information
  - Calorie Counts
  - Intake/Output
  - Brevity/missing of consults

A Current Case: Let's Look at the Weights

Date	Pounds
June 30	203.5
July 5	205
July 13	197
August 2	168.5
August 9	171
August 16	161
August 17	156
August 19	154
August 20	152.5
August 22	152.5
August 23	153
August 24	152.5
August 27	142

Two WRONG Ways to Document Unintended Weight Loss

- Using “above ideal body weight” as a justification that weight loss is acceptable
- Adding more food for a person who is not consuming the food already being served
  - Must do a root cause analysis

Positive Weight Loss???

[redacted] CENTER
DIETARY PROGRESS NOTE

RESIDENT NAME: [redacted] ADMISSION DATE 3/9/[redacted] MR# [redacted]

PHYSICIAN [redacted] DATE 11/9/[redacted]
PREVIOUS DIET ORDER: Pureed CURRENT DIETRDER Mech Soft
SUPPLEMENT / SNACKS: House Shake
WT 112.7 WT CHANGE SINCE LAST REVIEW 11.8% wt ↓ IBW 98%
USUALWT 127 HT 58.8"
WOUNDS / SKIN: no skin tear.
FEEDS SELF: ASSIST W / MEALS: ✓ TOTAL FEED TUBE FED
LABS: No New Labs work.

SUMMARY: Resident has wt ↓ of 11.8% since last review. will talk to P.A about wt loss but her IBW Range is 81%-101% -50 (+) wt ↓ loss c [redacted] 11/9/[redacted]

Interventions Must Address Root Cause

- **Poor appetite**
  - Small, frequent meals
  - Cultural and favorite foods
  - Fortified foods to get “more bang for the bite”
- **Dry mouth**
  - Provide ice chips, popsicles, or moistened swabs
  - Keep lips moistened with petroleum jelly or lip balm
- **Mouth pain**
  - Soft and bland , non-irritating foods
- **Constipation**
  - Add extra fiber as tolerated (start slow and gradually increase)
  - Serve additional liquids – prune juice can be helpful to some
- **Diarrhea**
  - Avoid “trigger foods” that stimulate the bowels/ diarrhea (simple sugars, sugar alcohols, caffeine, alcohol, high fiber, and gas producing foods)
  - Add fluids and electrolytes to prevent dehydration with diarrhea
- **Nausea or vomiting**
  - Serve bland foods (crackers, toast)
  - Limit sights, sounds, smells that trigger nausea/vomiting
- **Altered taste and smell**
  - Plastic silverware if taste is metallic
  - Experiment with seasonings/flavoring (lemon juice, vinegar, herbs, etc)

Data Collection v. Intervention

- Weigh weekly
  - Reweigh
  - Monitor weights
- Speak to MD/PA
  - Discuss at care plan meeting
- Get labs
- Continue to monitor
  - Follow prn

This is not an intervention!

This is data collection.

Documenting Declining Body Weight

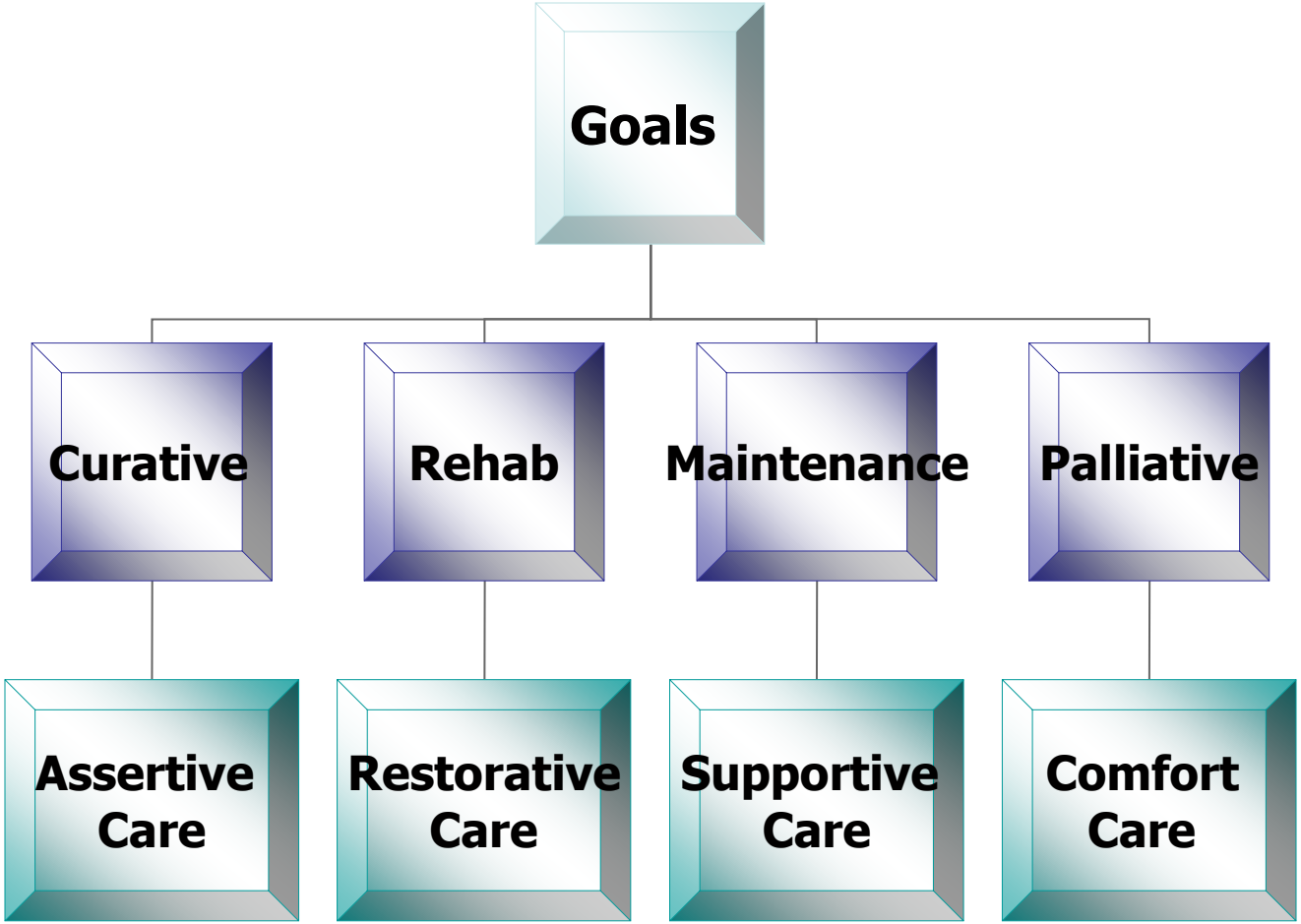
- Weight loss is anticipated due to…
- Communicated to family and team
- Discussion on enteral nutrition
- Hospice services does not mean discontinuation of nutrition care

Addressing Weight Loss at End of Life

- Adequate nutritional intake is often difficult, if not impossible, for the person at end of life
- Starving people generally want food; dying people do not
- Help family members understand this change in metabolism
  - avoid the use of the word *starvation*

Hospice Patients Alliance. Food, Nutrition, Artificial Feeding Methods, Constipation, and Other Considerations. Available at http://www.hospicepatients.org/hospic28.html.

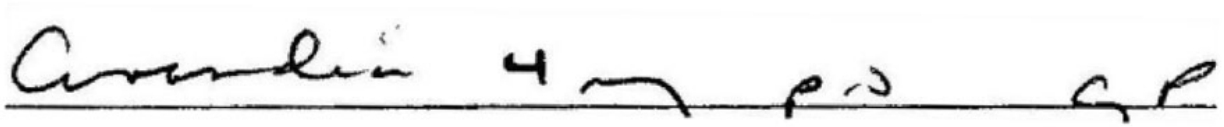
What is Enough Care or Intervention? Define the Outcome Expectations



Common Sense Issues

- ✓ No dates
- ✓ Dates don’t match
- ✓ Illegible information
- ✓ Abbreviations not understood by others
- ✓ Notes not signed

What Does This Say?



Coumadin
Avandia

25 U/hr
25 cc/hr

Beware of Copy/Paste

- Propagating errors
- Chronology errors
- “Note bloat”
- Provenance should be preserved

Common Care Issues

- Incomplete assessments
  - No nutrient needs assessment
  - No lab values
  - No continuity of care from previous healthcare facility
- Lack of follow up on recommendations
- Timeliness of action
- Erroneous information

Steps for Improving Documentation

- Identify your weak areas
  - Chart audits
  - Peer reviews and/or consultants
- Review policies for weak areas
  - Eliminate unnecessary orders unless the reason for obtaining data is clear
- Revise data collection forms and tools or process

Develop Good Charting Habits

- Verify orders and information for yourself
- Be clear about your plan
- Document who you spoke with
  - "Daughter" or "daughter Eileen Jones"
  - "Notified doctor's office"
- Notify/involve other disciplines as appropriate

The Ultimate Question

Ask yourself this:

- if another practitioner (e.g. RDN) had to step in and take over the care of this patient, does the record provide sufficient information for the seamless delivery of safe and competent care?

Attitudes

- Professional dress and appearance
- Sincere concern
- Attitudes towards end-of-life issues and nutrition support
  - Is TF appropriate?
- Team approach to nutrition care
  - Rapport with physicians and nurses
  - Utilization of other disciplines

The Fine Line of Being Professional

- Be courteous and genuinely concerned in a professional manner
- Patients and their family members are not your friends or confidantes
- Do not use work email for personal use or personal commentary on workplace
- Do not disclose facility mismanagement or problems to “guests”
  - *“I am so sorry your medicine is late – we are so short staffed again today!”*
  - *“I am exhausted.”*

Training

- Must be on par with duties
- Role of dietetic technicians, CDM, and foodservice manager
- Specialized training in pressure ulcers and other “hot” topics
- CDR Professional Development Portfolio With Essential Practice Competencies

Order Writing Privileges

- More responsibility for the patient = more responsibility for the outcome
- Malpractice and duty
  - 24-hour coverage
- Not every RD in a facility has to be afforded the same level of privileges

Nutrition Standards

- Standards have changed with development of higher level products, devices, and drugs
  - *"We don't do it like that here."*
  - *"Oh, we don't use ____ here."* (fill in the blank)
- Policies should reflect actual process
- Consultant agreement should be adequate to meet facilities needs

How does one minimize the risk?

- Professional liability insurance
  - Highly recommended in most cases
  - Usually pays for attorneys' fees as well as judgment or loss (but confirm in policy)
  - Evaluate your need for insurance
    - Need may differ according to nature of practice
    - May be provided by your employer or facility
    - ***But remember:***
      - Anyone can file a lawsuit, with little basis
      - The costs of litigation are extremely high, even if you win.

How does one minimize the risk? (cont'd)

- Elements of practice
  - Do a good and competent job
  - Practicing competently and well is the best defense
  - Utilize new or untried practices only with reliable support and evidence
    - Off label usages
  - Caution or fear of a claim should not overwhelm your judgment

How does one minimize the risk? (cont'd)

- Treat your clients fairly and openly
  - Unfair or unfavorable treatment will give your client another reason to want to assert a claim
- Keep your clients well-advised
  - Informed clients cannot claim that they were misled or deceived
- Maintain good documentation
  - Lawsuits are often brought long after your treatment
  - Memories will fade
  - Accurate contemporaneous notes will confirm what you did, why you did it, and who you consulted in the process

How does one minimize the risk? (cont'd)

- Consult and advise other providers on your team
  - Involving others in your practice will provide additional confirmation of your actions
- Use waivers, disclaimers, and informed consent appropriately

The Bottom Line

- Your best defense is the medical record
- Give the type of care you wish for your own loved ones
- High level of care elevates the perception of the entire profession

Thanks for Attending!

Let's discuss…

More questions?

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