

### "Captain of the Ship" or Nursing Liability?

Historically, nurses have been protected from professional liability (nursing malpractice) through hospital liability and/or surgeon responsibility, commonly known as "Captain of the Ship." Despite this umbrella of protection, it is becoming more common for licensed professional nurses to be held responsible both for their own actions and the actions of those under their direction. Malpractice applies to any action or omission performed by a professional in the course of professional practice.<sup>1</sup> If a nurse follows hospital procedure guidelines and doctor's orders but the patient still sustains an injury due to the nurse's actions, who is to be held responsible? When would an injury be considered nursing malpractice?

Due to more extensive education and skills, a licensed specialty nurse, such as a perioperative nurse, is held to a higher standard when providing patient care in the operating room. Nurse conduct is measured against that of other reasonably prudent nurses under the same or similar circumstances and with the same education and skills.<sup>2</sup> The perioperative nurse needs to be aware of standards that reflect the values and priorities of the profession. Perioperative nursing standards focus on the individual (the patient) experiencing surgical intervention.<sup>3</sup> The operating room staff is responsible for the most vulnerable type of patient, the unconscious patient. Once asleep, this patient cannot respond to painful stimuli and is completely dependent on the operating room staff for protection.

Time constraints may place all nurses in ethical and legal dilemmas. The perioperative nurse must be aware of the patient's unique needs as well as all written or verbal orders and still "get the patient on the table." The perioperative nurse may have little time to access the patient, plan intraoperative interventions, carry out all duties and responsibilities, perform postoperative evaluation, and then accurately document the care provided. Should the nurse fail to exercise reasonable care and a patient injury is sustained, that nurse may be held legally liable for his or her actions.

Legal claims brought against perioperative nurses from 1994 through 1996, as reported by a professional liability insurance, provider include:

- Retained foreign bodies
- Cases involving burns (electrosurgery)
- Patient positioning related injuries
- Wrong site surgery
- Injury secondary to tourniquet use
- Medication overdose<sup>4</sup>

Electrosurgery is named as one of the six most common causes of patient injuries in the operating room. Approximately 90% of all surgical procedures require electrosurgical (ES) equipment. The operating room staff has a professional obligation to patients and a legal obligation to the hospital and themselves to understand



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the basic principles and safe use of ES generators and accessories.

AORN Patient Outcomes Standard 1.4 states, "The perioperative RN is to be actively involved in identifying potential hazards in the practice setting and in implementing appropriate interventions." *AORN Recommended Practices for Electrosurgery* provides guidelines to assist perioperative nurses in the general use of electrosurgical equipment. The operating room staff should be competent in the use of surgical equipment according to the manufacturer's instructions. All care and use of medical device equipment and related single use device products must be documented. Based on their knowledge of medical device equipment, all operating room nurses should be able to answer to following questions:

- Is the scrub person liable for a patient injury caused by fire when an ES pencil is not placed in a safety holster?
- Is the nurse liable for a patient injury due to poor placement of the return electrode or excessively high generator power settings?
- Is the perioperative staff responsible for a patient injury due to electrode insulation failure or poor assembly of an instrument?
- Who is liable when a medical device is used without proper inservice?

Operating room staff may be named in liability suits related to:

- Alternate site electrosurgical burns
- Patient return electrode site burns
- Active electrode burns
- Insulation failure injuries
- Capacitive coupling injuries
- Ignition incidents (fires)
- Improper use of electrosurgical equipment

All surgical patients have a right to be free of injury caused by the use of electrosurgical equipment. Most manufacturers of electrosurgical equipment provide detailed instructions for safe use of their products. In addition to written guidelines, cautions, and warnings, operating room staff should expect a thorough inservice and education program from manufacturers.

For greater patient safety and to decrease nursing malpractice liability, it is imperative the operating room staff is aware of ES safety recommendations, which include, but are not limited to:

- Use isolated electrosurgical generators and appropriate power settings

- Understand the proper choice and application of patient return electrodes
- Inspect ES units, instruments, electrodes and connections
- Use either all metal or all plastic cannulas during laparoscopic procedures
- Encourage the use of bipolar electrosurgery for minor procedures
- Do not bundle ES cords or wrap cords around metal objects
- Remove patient's jewelry
- Avoid patient skin-to-skin contact
- Control heat sources
- Manage fuel sources
- Minimize oxidizers
- Document use of medical devices
- Document type of return electrode and placement
- Document power settings
- Refer to your hospital's policy and procedures for guidelines
- Follow manufacturers' instructions

For additional information on many of these electrosurgical safety topics please visit the Clinical Hotline Website at [www.valleylab.com](http://www.valleylab.com): Click on **Enter Website, Clinical Education**, and then **Hotline News**, or call us on the Valleylab 24-hour Clinical Hotline, **800 255-8522 ext. #2005**.

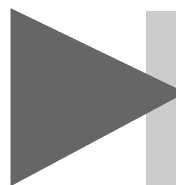
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1) AORN Journal, May 1997, p.972

2) Bernzweig, E. P. (1996). *The Nurse's Liability for Malpractice*. St. Louis, MO: Mosby, p.54

3) AORN (2001), *Standards, Recommended Practices and Guidelines*. Denver, CO: Author, p. 137

4) AORN Journal, May 1997, p. 972



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