PERINATAL LEGAL RISKS: TIPS ON STAYING OUT OF COURT

Presented by
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Objectives:

- Learn Communication Strategies to Assure Patient Safety, Patient Satisfaction & Reduced Litigation Risks
- Understand the Importance of Clearly Defined Roles & Responsibilities Amongst OB Team Members
- Understand the Need to Preserve, Photograph and Document Critical Clinical Specimens Following an Unexpected Outcome
- Identify a clinical judgment error related to fetal monitoring
- Understand the importance of supervision of Agency staff
- Learn what is legally discoverable
- Understand the Importance of Utilizing Chain-of-Command

Before We Begin

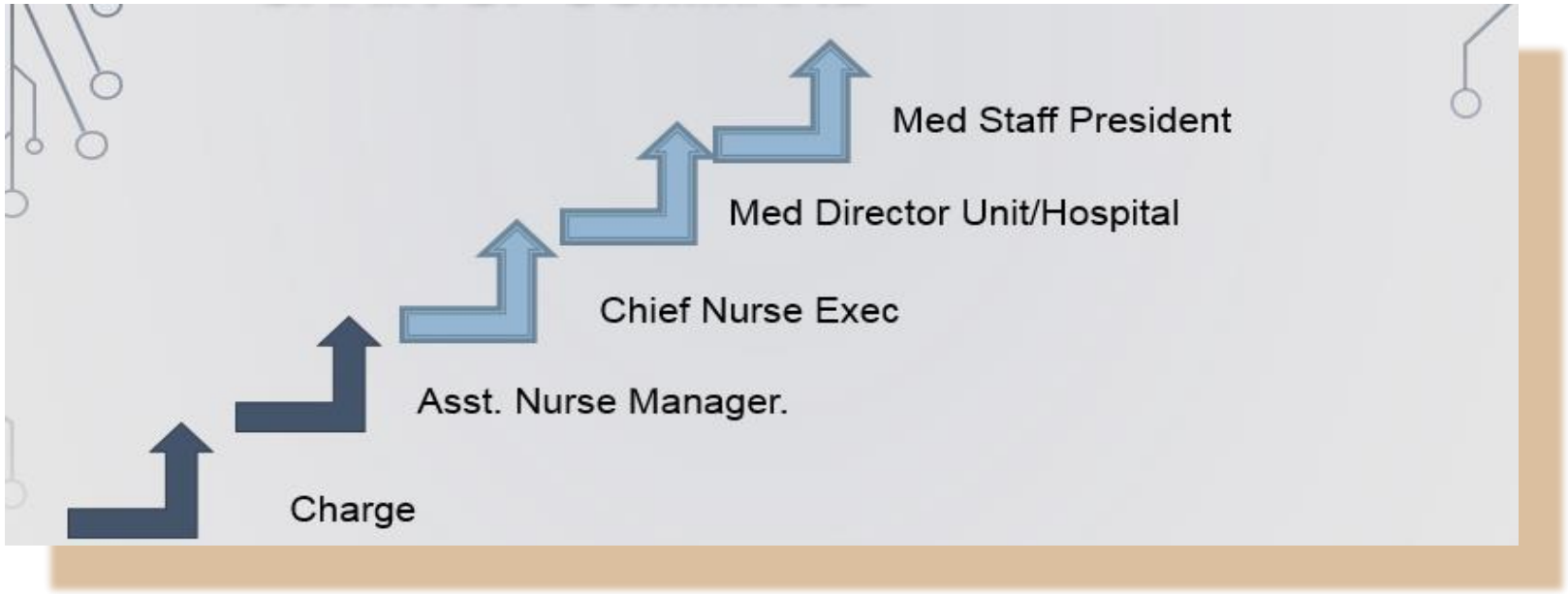
Thank You for All You Do!

The Case of Blurred Lines: Roles of the RN, CNM & OB

CASE EXAMPLE: After prolonged labor, despite the variance in FMS interpretation between RN & CNM who had been at bedside, what was RN's responsibility?

- Other Issues: Several **contacts between CNM & OBGYN** relative to progression of labor **(curbside vs. formal consult?)**
- **CNM's delayed request** for OBGYN to assume care postponed emergency C-section
- Chain-of-command argument made **vs. RN**

The Case of Failure to Use Chain of Command



- **Legal argument & implied duty** that **RN will notify nursing leadership when plan of care or team member's behavior is questionable**
- **Provides** healthcare staff with a **formal process** to use when attempting to get **satisfactory resolution or to report concerns**

The Case of the Resistant Patient &/or Significant Other RE. Emergent C-Section:

CASE EXAMPLE: Conflicting deposition testimony of VBAC patient & SO vs. OBGYN concerning discussion surrounding urgent C-Section & lack of adequate medical documentation

- Consider **RN/OB team approach** with patient conversation when time is of the essence
- **RN may have stronger relationship** with patient after several hours of labor **than OB who may not be regular provider** who is urgently/emergently recommending C-section
- **Conversation needs to be clear and straightforward** about **risks** to patient &/or baby i.e. **"And you or your baby could die."**
- **Each person present** needs to **document exactly what was discussed with patient**

The Case of the Difficult OB Conversations & Decision RE: PPROM with Limited English Proficiency Couple

CASE EXAMPLE: The "Crib in the Parking Lot"

- **Federal Title VI of the Civil Rights Act of 1964** prohibits recipients of federal funds, including hospitals that participate in the Medicare program, from **discriminating on the basis of race, color, or national origin**
- **California state law** requires licensed general acute-care hospitals to implement policies to **provide language assistance services to patients with language or communication barriers**.
- **Cultural & language misunderstandings** **"resuscitation vs. resurrection"**

Not actual patient's husband

The Case of Whose Heart Beat During 2nd Stage of Labor?

CASE EXAMPLE: Complete Surprise at Birth of Baby's Severally Compromised Condition and the Cause.

AJOG Case Report:
Signal Ambiguity Resulting in Unexpected Outcome with External Fetal Heart Rate Monitoring

Duncan R. Neilson Jr, MD; Roger K. Freeman, MD; Shelora Mangan, RNC, MSN, CNS
JUNE 2008 **American Journal of Obstetrics & Gynecology**

"**Maternal pulse oximetry**, especially in second stage, **should help eliminate** the risk of this **confusion**, but the pulse rate printout from the pulse oximeter is affected by **maternal movement** and other factors, **limiting its reliability** for this purpose… the **scalp electrode** is the **most accurate** way to assess the fetal status."

The Case of the Missing Placenta: Pregnancy Roadmap & Critical Causation Evidence

Indications for Placental Pathology:

- Physical abnormality (**infarct, mass, vascular thrombosis, malodor,** etc.)
- **Small or large size** or weight for gestational age
- Umbilical cord lesions (**thrombosis, true knot, single artery, absence of Wharton's Jelly**)
- Short **umbilical length less than 32cm**
- **Long cord** (>100cm)
- **Abnormal placental shape**
- **Marginal or velamentous insertion**

The Case of the Missing Placenta:

Maternal Indications for Placental Examination

- Systemic Disorders: Severe **Diabetes**, **Hypertensive** disorders, Collagen Disease, **Seizures**, Severe **anemia**
- Premature Delivery **less than or equal to 34 wks. gestation**
- Gestational age **> 42 weeks**
- Peripartum **fever** (100.5 or greater)
- Unexplained or **excessive 3rd trimester bleeding**
- Clinical concern for **infection** during this pregnancy (**HIV, Syphilis**, etc.)
- Severe **oligohydramnios**
- Severe **polyhydramnios**
- **Abruption**
- Hx of **substance abuse**
- **Prolonged ROM**

The Case of the Missing Photographs

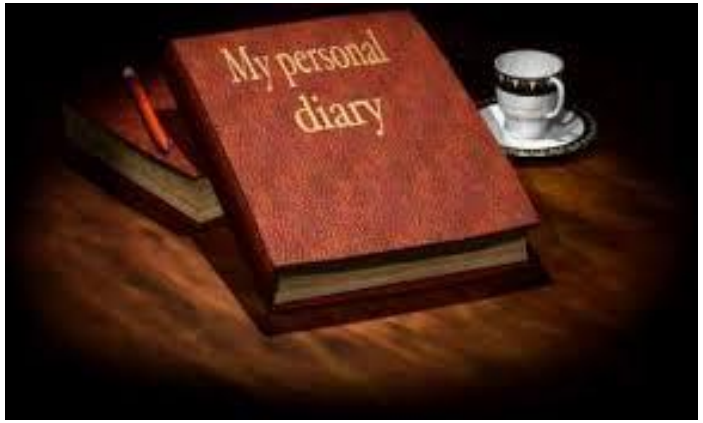
Photographs of Long/Short/Knotted/Coiled Cords or Placental Abnormalities

- Cord abnormalities can explain problems with perfusion or point to developmental problems in utero

The Case of Personal Notes, Diaries, Journals, Email, IM's- All Discoverable

CASE EXAMPLE: During Labor RN's deposition she admitted to having personal journal discussing delivery. Unfortunately court required RN to produce her journal in which RN was very critical of OBGYN's care.

- This made the case **more difficult to defend** for all defendants and **likely more costly to settle**.
- In another case **texting of a casual nature** made author of the text appear **unprofessional** and **raised questions about the care.**



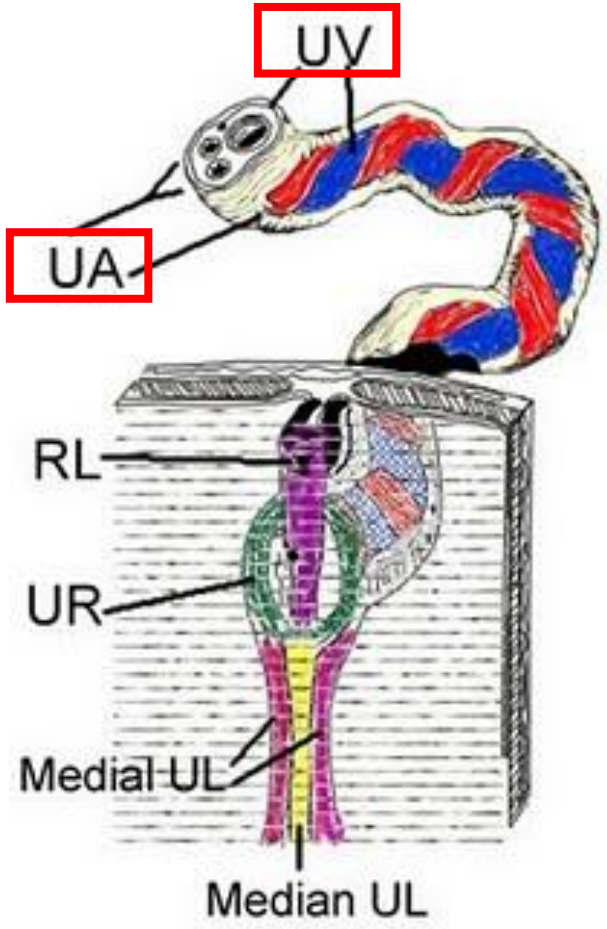
The Case of Social Media Admissibility

CASE EXAMPLE: RN posted on Nurses Union Blog circumstances surrounding difficult shift after getting off of work on case that later went in to litigation.

RN made no mention of specifics about patient or hospital identity. Court ruled it had to be produced & was admissible.

Case of the Missing Cord Gases: No Standing Orders or Reminder to Provider to Order

- **Umbilical Cord Gases provide evidence** of infant's condition at birth relative to **acidosis & labor**
- Need <u>both</u> umbilical **arterial**
- <u>And</u> umbilical **venous** gases



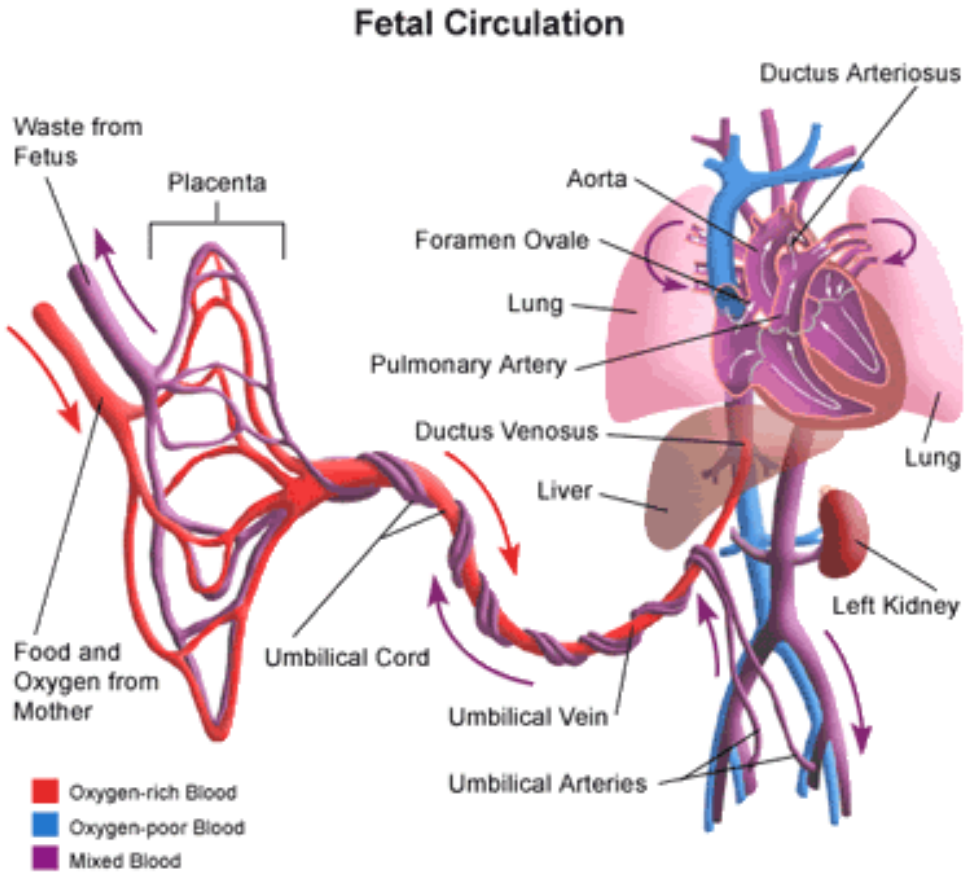
ACOG Committee Opinion No. 348, Nov. 2006

"**Umbilical cord blood gas and acid-base assessment** are the **most objective determinations** of the **fetal metabolic condition** at the **moment of birth**...Both the International Cerebral Palsy Task Force and the **ACOG Task Force** on Neonatal Encephalopathy and Cerebral Palsy have published criteria to **define an acute intrapartum event as sufficient to cause cerebral palsy**..."

The following are **indicators for obtaining cord gases**:

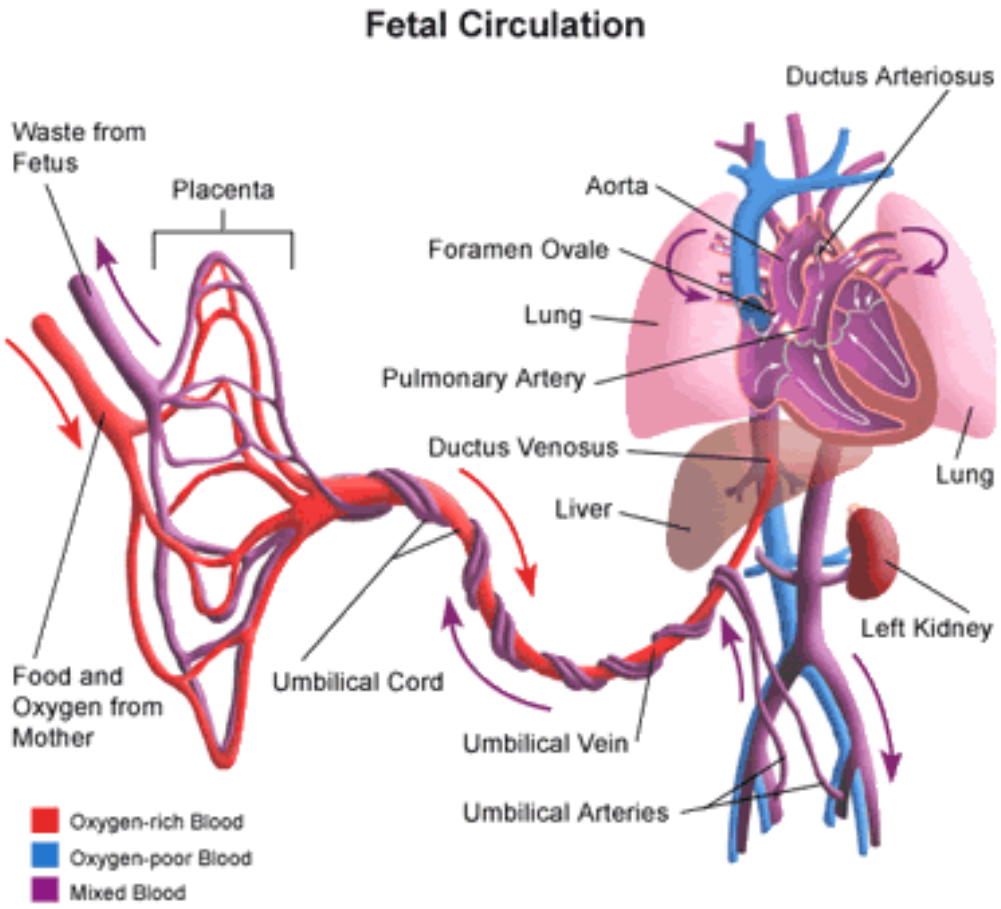
- Cesarean delivery for fetal compromise
- Low 5-minute APGAR scores
- Severe growth restriction
- Abnormal fetal heart rate tracing
- Maternal thyroid disease
- Intrapartum fever
- Multi-fetal gestation

Was It Respiratory Acidosis Due to Variable Decels?



- **pH < 7.25**
- **pCo2 > 50 mmHg**
- **Base Deficit < 10mEq/Liter**

Was It Metabolic Acidosis Due to Late Decels?



- **pH < 7.25**
- **P02 <20 mmHg**
- **pC02 4555 mmHg**
- **Base Deficit > 10mEq/liter**

The Case of Failure to Adequately Supervise Agency RN

CASE EXAMPLE: Due to high census, Charge RN was assigned to Patient. Charge didn't have sufficient time to closely supervise Agency RN's care of patient who had prolonged labor. Agency RN's updates to provider were inadequate. Poor outcome.

- Despite appropriate credentialing and hospital's on-boarding orientation & assessment, beware of making general assumptions about Agency staff's competency and ability to work independently until they have been adequately observed.
- Beware of Agency staff who are "too independent".

In Summary

- Remember to **work as a team** making sure to **ask clarifying questions** and **sharing your concerns** with providers and staff.
- Be certain to **secure and preserve important clinical evidence** such as **umbilical blood gases** and **placentas** which are so critical to answering causation questions for parents in the event of an unexpected outcome, or in litigation.
- Your **unusual occurrence reporting** is where to **document concerns about staffing, operations, working relationships**, etc., not in the patient's medical record. And **not on social media or in personal notes; it's all discoverable**.
- When treating **LEP patients**, remember to **use interpreters and translate consent & educational documents**. You can't rely on family members unless it is an emergency.

Thank You!

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