



Cases from an Expert Witness



Katherine Duncan, BA, RN, CRN

ARIN 2015 Annual Conference
Atlanta, GA



Alternative titles:

Why we document!



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Alternative titles:

What is the Standard of Care?



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Alternative titles:

How not to get in trouble!



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Alternative titles:

Why in the world did they do
that?...or, not do it right?



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Headlines

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“Cardiac cath technologist charged in hepatitis C infections”

“Mayo says 3K patients at risk in hep C scandal”

“Docs win most malpractice suits, but road is long”

“Whistleblower claims net \$1.5M from CDI”

**“Dallas imaging practice squabble yields
\$11M jury award”**

Objectives

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1. Anatomy of a legal case
2. Define the Standard of Care
3. Discuss legal cases
4. Identify resources for Standard of Care
5. What protects the radiology nurse




Hep C case

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- The case

 **U.S. Food and Drug Administration**

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May 11, 2012: Mayo Clinic Radiology Tech Pleads Guilty to Spreading Hepatitis C



**Food and Drug Administration
Office of Criminal Investigations**

U.S. Department of Justice Press Release

**For Immediate Release
May 11, 2012
United States Attorney
Middle District of Florida**

Jacksonville, FL - United States Attorney Robert E. O'Neill announces today that Steven Beumel (48, Jacksonville) pleaded guilty to one count of tampering with a consumer product resulting in death, four counts of tampering with a consumer product resulting in serious bodily injury, and five counts of stealing Fentanyl by deception. Beumel faces a maximum penalty of life in federal prison. He was arrested by FBI agents on May 24, 2011 and has remained in custody since his arrest. A sentencing date has not been yet scheduled.


According to court documents, Beumel was a radiology technician at Memorial Hospital from May 1992 through October 2004. He worked as a radiology technician at the Mayo Clinic in Jacksonville from October 2004 through August 2010. Beumel admitted, in court, that he stole syringes of Fentanyl during patients' procedures and replaced them with syringes of saline contaminated with Hepatitis C. Beumel's tampering occurred from 2006 through 2008 at the Mayo Clinic's interventional radiology unit.

Hep C case

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- Fentanyl syringes are at risk.
 - Do you have a Pyxis in the room?
 - Who has access?

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- Did anyone notice?
 - Colleagues behavior
 - Syringe looked different
 - Patient not responding to pain med

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 - Do you have a Pyxis in the room?
 - Who has access?
- Did anyone notice?
 - Colleagues behavior
 - Syringe looked different
 - Patient not responding to pain med
- Empower staff
- Control access
- Talk about these issues
- Have a reporting system

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Hep C case

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- Stress Lab
- Technologist hired
- Infected 3 patients that day
- Six months later infected 4 patients

WITNESS FOR THE PLAINTIFF – the injured party

Hep C case

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- **How did this happen?**
 - Follow the practice...
- **Who is at fault?**
 - No safety officer/policy
 - No documentation of oversight or training
- **How do we prove it?**
 - # of saline vials ordered
 - AHA guidelines for cardiac clinics
 - CDC genetic screening of Hep C strain



What is an expert witness?

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- Qualified in the field at the time of the “injury”
- Expert based on scientific, technical or specialized knowledge.
 - Presented or written in the field
 - Years experience
 - Supervisory experience
 - Clinical experience
 - Experienced the same issue (i.e.. Reaction, specific procedure)
 - Certified Radiology Nurse
 - Teach technologists as well

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 - Certified Radiology Nurse
 - Teach technologists as well
- Testifying to an “expert” opinion
 - Did the nurse/tech in question provide the standard of care?
 - What was the deviation from standard?

Expert Witness Job

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- Review complaint
- Review medical records of each patient
- Review policies and procedures of site
- Review CDC's interviews
- Review depositions of:
 - Patient
 - Patient's ordering physician
 - Clinic physician
 - Clinic office manager
 - Technologist
 - Previous technologist



Expert Witness Job

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- Educate the lawyer
- Ask questions
- What questions need to be asked
- Provide opinion on case
- Don't write any notes
- Form a timeline of events

Deposition

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- 4 hours
- 4 attorneys
- Court reporter
- A bottle of water
- Let the questioning begin.....



Deposition

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- **Who are you?**
- **What makes you think you are an expert?**
 - Not a tech@!
 - Work at a cardiac clinic/stress lab
 - Safety work
 - Policy and procedures
 - Teach IV techniques
 - Help screen patients, begin IV, monitor process
- **Came down to educating the “jury”**
 - One needle, one vial policy and how this was violated

Deposition

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- Patient A arrives – IV started, resting dose
- Patient B arrives – IV started, resting dose
- Patient A – gets stress dose, stress test
- Patient C – IV started, resting dose
- Patient B – gets stress dose
- Patient D – IV started, resting dose
- Patient C – gets stress dose
- Patient D – gets stress dose



Hep C case

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One of two patients died from Hep C during the case.

Never knew outcome.

Physician settled. Practice closed?

Technologist = case dropped. Teaches now.

Never admitted bad practice.

Types of Law -Criminal

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Criminal – offense against society

- Case prosecuted by the state
- Forgery, theft, assault, false imprisonment
- Drug diversion
- Elements of a crime
 - ***Mens Rea*** – state of mind to commit an act
 - Intent:
 - Purpose
 - Knowledge
 - Recklessness
 - Negligence
 - ***Actus Reus***– prohibited act or failure to act



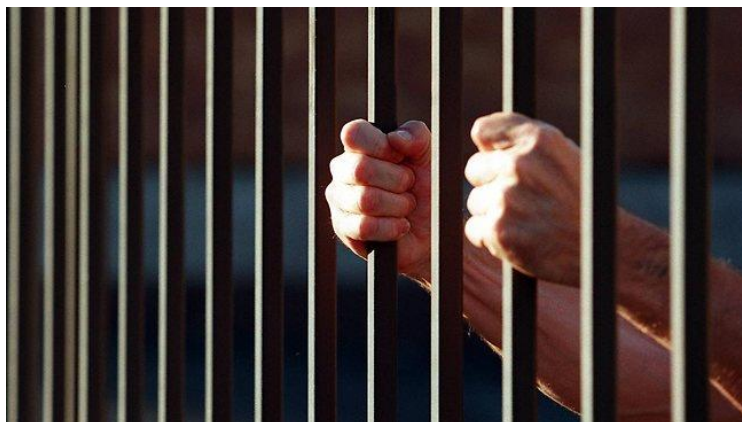
Types of Law -Criminal

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Tech with fentanyl:

- **P**leaded guilty to one count of tampering with a consumer product resulting in death, four counts of tampering with a consumer product resulting in serious bodily injury, and five counts of stealing Fentanyl by deception.
- Faces a maximum penalty of life in federal prison.



Types of Law - Civil

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Civil – rights

- Remedy “makes whole again”
- Tort – wrongful act causing injury
 - Negligence, personal injury, medical malpractice
 - Invasion of privacy (HIPAA)
- Plaintiff – brings the case
- Defendant – responds
- Settlement vs. court
- Discovery, opinions, depositions, testimony



Tort Law

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- Remedy is to make injured person(s) whole again, usually with monetary award.
- Establishing negligence
 1. Duty
 2. Breach of duty
 3. Proximate cause
 4. Damages

MALPRACTICE



Standards of Care

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Negligence is a failure to act as an ordinary prudent person or reasonable man would do.

For medical malpractice:

1. Duty owed to patient. Usually occurs when healthcare provider accepts responsibility for the care and treatment of patient.
 2. Breach of duty or **standard of care** – must be determined to see if there has been an act of omission or commission that has caused damage to patient.
 3. Proximate cause or connection must be evident between breach of duty and harm
 4. Damages or injuries must be suffered – include, but not limited to: loss of love and affection, pain and suffering, mental anguish, emotional distress, loss of chance of survival, disfigurement, medical expenses, loss of wages, premature death,
- Reasonable conduct
 - Degree of skill, care, judgment used by ordinary healthcare provider under similar circumstances.

Contrast Reaction Case

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EXPERT WITNESS

- Patient for CT
- Unknown previous contrast reaction
 - Patient not educated
 - Minimal documentation
- Nausea, “don’t feel right” to respiratory distress
- RN responds with Solumedrol and Benadryl
- Calls for help
- Code leads to severe brain hypoxia

Contrast Reaction Case

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Qualified?

- Number of contrast reactions handled?
- Number of anaphylaxis?
- Training in BLS and ACLS?

What do we know?

Where do we look?

What else would help?

Did the nurse provide the standard of care?

Contrast Reaction Case

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- Review previous study with reaction
- Review why CT ordered
- Follow the patient through the halls
- Planned to trace the time it took from ER to CT
- Look for the time stamp on the CT scan
- What is the policy for codes?
- What is in the contrast kit?

Why wasn't EPI used immediately? MD had provided expert opinion that this is the only treatment for anaphylaxis.

Standard of Care Resources

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What are resources for standard of care?
Examples?

Standard of Care Resources

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ACR Manual on Contrast Media

SIR Clinical Practice Guidelines and Position Statements

ARIN Clinical Practice Guidelines and Position Statements

ARIN Publications

Journal of Radiology Nursing

ANA Standards of Practice

Hospital Policies

Hospital Orientation materials

Standard of Care Resources

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Public Health Advisories (Drugs) > Public Health Advisory: Risk of Burns during MRI Scans from - Windows Internet Explorer pro

http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/DrugSafetyInformationforHealthcareProfessionals/PublicHealthAdvisories/.../PublicHealthAdvisoryRiskofBurnsDuringMRIscansfromTransdermalDrugPatcheswithMetallicBackings

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Drugs

Home > Drugs > Drug Safety and Availability > Postmarket Drug Safety Information for Patients and Providers

Drug Safety and Availability

- Postmarket Drug Safety Information for Patients and Providers
- Drug Safety Information for Healthcare Professionals
- Public Health Advisories (Drugs)
- 2009 Public Health Advisories
- 2008 Public Health Advisories
- 2007 Public Health Advisories
- 2006 Public Health Advisories
- 2005 Public Health Advisories
- 2004 Public Health Advisories
- 2003 Public Health Advisories
- 2002 Public Health Advisory
- 2001 Public Health Advisories
- 2000 Public Health Advisories
- Pre-2000 Public Health Advisories

Public Health Advisory: Risk of Burns during MRI Scans from Transdermal Drug Patches with Metallic Backings

3/5/2009; updated 3/9/2009

The FDA has been made aware of information about certain transdermal patches (medicated patches applied to the skin) that contain aluminum or other metals in the backing of the patches. Patches that contain metal can overheat during an MRI scan and cause skin burns in the immediate area of the patch.

Transdermal patches slowly deliver medicines through the skin. Some patches contain metal in the layer of the patch that is not in contact with the skin (the backing). The metal in the backing of these patches may not be visible. The labeling for most of the medicated patches that contain metal in the backing provides a warning to patients about the risk of burns if the patch is not removed before an MRI scan. However, not all transdermal patches that contain metal have this warning for patients in the labeling.

FDA is in the process of reviewing the labeling and composition of all medicated patches to ensure that those made with materials containing metal provide a warning about the risk of burns to patients who wear the patches during an MRI scan.

Until this review is complete, FDA recommends that healthcare professionals referring patients to have an MRI scan identify those patients who are wearing a patch before the patients have the MRI scan. The healthcare professional should advise these patients about the procedures for removing and disposing of the patch before the MRI scan, and replacing the patch after the MRI scan. MRI facilities should follow published safe practice recommendations concerning patients who are wearing patches.^{1,2}

Until this safety issue is resolved, FDA recommends that patients who use medicated patches (including nicotine patches) do the following:

- Tell the doctor referring you for an MRI scan that you are using a patch and why you are using it (such as, for pain, smoking cessation, hormones)
- Ask your doctor for guidance about removing and disposing of the patch before having an MRI scan and replacing it after the procedure.
- Tell the MRI facility that you are using a patch. You should do this when making your appointment and during the health history questions you are asked when you arrive for your appointment.

The FDA urges health care professionals and patients to report possible cases of skin burns while wearing patches during an MRI to the FDA through the MedWatch program by phone (1-800-FDA-1088) or by the Internet at MedWatch: The FDA Safety Information and Adverse Event Reporting Program.

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Standard of Care Resources

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http://www.nso.com/pdfs/db/newsletters/2012-APN-Risk-Advisor.pdf?fileName=2012-APN-Risk-Advisor - Windows Internet Explorer pro

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Save a Copy Search Select 152% Search Web

Editor's Note

To continue providing safe, effective patient care, the healthcare industry is constantly transforming. It's up to healthcare professionals to stay current on frequently evolving elements such as your facility's policies and procedures, and services to new patient populations. The articles included in this issue outline topics related to potential healthcare changes and how to best handle the new situations you'll likely encounter.

nso
nurses service organization

**Nurses Service Organization
Risk Advisor for Nurses
Advanced Practice Nurses**

Improving health literacy improves patient outcomes

Imagine you're an advanced practice nurse (APN) in a family practice clinic. One morning you see a new patient, whom you diagnose with hypertension. You provide education, including how to take his antihypertensive medications, and send him on his way. Late the next day you get a call that your patient ended up in the Emergency Department (ED) because he overdosed on his medication, taking six pills instead of two. His

such as "teach-back" and patient-friendly education materials to help ensure comprehension.

The value of health literacy

Patients have to understand instructions so they can manage their own care and improve outcomes. February's Health Affairs cites studies of strategies that improve patient adherence. For instance, medication counseling using a plain

1 of 7

start Windows Media Player Outlook Web App - W... http://www.nso.com/... Radiology and the La... photos - Microsoft Word 11:43 AM

Standards of Care

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- What is standard of care for contrast reaction?
- Establish experience of expert
- Define what happened
- Resources for standards
 - ARIN Policy guidelines
 - Core Curriculum
 - ACR Contrast Manual
 - Hospital policies
- Were these breached?



Expert Witness Case

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Establish experience and authority

Contrast case:

- When do we call it anaphylaxis? **Not immediately.**
- What would I do? **Same thing.**
- Timing is everything **5 min vs. 40 min**
- Why not use epinephrine immediately? **Not immediately warranted.**
- Was the code managed appropriately? **Completely – great documentation !!**

Case Examples

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Cases:

- Recovery of patient post procedure
- Not assessing neuro post neuro procedure
- Extravasation
- Broken rib in mammo
- IVC ordered temp, placed perm
- Fell off the table
- RFA caused damage

Most common problems

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Facility mistakes:

Supervision

Training and check off

Policy

Procedural culture

Poorly staffed

Equipment issues



Most common problems

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RN mistakes:

Documenting

Accuracy

Not following orders

Assessment

Recognizing an emergency

Communication

Working outside scope

Patient education



TAKE HOME — DOCUMENT!

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RN should consider:

- Document what you did- everything
- Document patient interaction
- Document what MD ordered and your intervention
- Document the time of your assessment, especially when documenting later
- Document even if the next day
- Make notes for yourself if concerned
- Document your education to patient and understanding
- Document what you gave the patient
- Document cultural/language barriers and how overcame
- Document if “against medical advice”

Good Samaritan

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- Laws for protection from voluntarily stop to render help
- Varies state by state
- May cover some but not all healthcare providers
- If aid rendered without expectation of \$



Advice

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DOCUMENTATION
DOCUMENT ACCURATELY
SAFE PRACTICES
SAFETY IN EVERY STEP
PROTOCOL AND PROCEDURES
RETRAIN, REEVALUATE, MONITOR
DISCUSS, DEBRIEF
EMPOWER

CASE OF THE ATTENDING



AALNC Position Statement

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For years, physicians testified to nursing care.
Supreme Court of Illinois found that a MD was not
competent to testify on standard of care of a nurse.

(Sullivan v. Edward Hospital., 806 N.E. 2d 645 (Ill. 2004))

“Nursing has evolved into a profession with a
distinct body of knowledge, university based
education, specialized practice, standards of
practice, a societal contract and an ethical
code.”

References/ Resources

