Nursing Home Litigation Fundamentals Seminar
October 28\textsuperscript{th}-29\textsuperscript{th}, 2016

DEPOSITION OF KEY WITNESSES-LEGAL ISSUES AND STRATEGIES

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What to Obtain During the Discovery Phase – OBRA

A. Deposition Notices

B. Job Descriptions
   • Administrator
   • Administrative Director of Nursing Services
   • Assistant Director of Nursing with Admin Duties
   • Nurse Aid
   • Nurse Supervisor
   • Clinical Services Consultant

C. Bonuses
   • ADNS
   • NHA
   • RDO

D. Floor Plan

E. Licenses

F. License Applications

G. Staffing & Resident Census

H. Medicaid Cost Reports

H. Resident Council Meeting Minutes

J. Budget
Did you receive training as it relates to the OBRA regulations?

Tell me the training that you received in the other nursing homes?

Do you have an understanding what the term OBRA means?

Based on your knowledge of the OBRA regulations, would you agree that the OBRA regulations adopted good nursing practice?
Some of the good nursing practice it adopted is just simply common sense? It is what good nurses do?

So whether it’s an OBRA regulation or not, as a good nurse you know that there are certain things that you do for the benefit of a resident?

Nobody has to tell you, for instance, that OBRA requires that you must hire competent people. You as a nurse know that you’ve to do that?
Establish through the Administrator, the DON, corporate representatives, even the President of the Corporation that facility is to follow the regulations;
Use the Statement of Deficiencies and the F Tags during the questioning of the witnesses;

Establish through the defendants’ own employees and the plaintiff’s expert(s) that O.B.R.A. establishes the acceptable standards of care;
Once Litigation commences, obtain the In-Services and Training given to the employees regarding the Deficiencies issued, resident rights, wound care, decubitus preventions, communications to the family and physician of changes of conditions, etc.,
Determine the level of involvement of the regional and/or home office;

Ascertain whether the Administrator’s Bonus may be somehow based on the number and/or scope and severity of deficiencies;
Learn whether home office has corporate meetings wherein the deficiencies are discussed? Have they Compared the Deficiencies? Whether they create a chart comparing the various facilities and their deficiencies within a particular region;

Does corporate have an individual in charge of training the employees as to the O.B.R.A. regulations?
Do you agree that OBRA requires that:
INSERT THE APPLICABLE OBRA SECTION SUCH AS
Do you believe in the principle that the facility should have sufficient staff to meet the needs of the resident 24 hours a day, seven days a week?

Do you believe in the principle that a resident should not be neglected?
42 C.F.R. 483.25 (h)

The facility must ensure that—

(1) The residents environment must remain as free of accident hazards as is possible; and

(2) Each resident must receive adequate supervision and assistance devices to prevent accidents.
42 C.F.R. 483.13. (c)

All injuries of unknown origin to a resident shall be reported to State authorities.
Medical Records:

The facility shall ensure that the resident’s medical records be consistent with professional standards. Nursing progress notes shall be sufficient and identify the resident clearly, describe the resident’s condition fully and justify treatment and the results of said treatment.
42 C.F.R. 483.30

Each resident shall receive nursing services and sufficient staffing to assure his/her needs are met 24 hours a day, 7 days a week.
42 C.F.R. 483.20:

Care plans shall address the comprehensive needs of the resident.
Each resident shall be free of abuse and neglect.
42 C.F.R. 483.20(b)(4)(iv)
The facility failed to conduct an assessment after a significant change in resident’s condition.
The facility must develop a comprehensive care plan that includes measurable objectives and timetables to meet a resident’s medical, nursing, mental and psychosocial needs that are identified in the comprehensive assessment. The plan of care must deal with the relationship of items or services ordered to be provided (or withheld) to the facility’s responsibility for fulfilling other requirements in these regulations.
42 C.F.R. 483.20(g)

The assessment must accurately reflect the resident’s status.
42 C.F.R. 483.10.(b)(11)

(A) A facility must immediately inform the resident’s physician and if known, notify the resident’s legal representative or an interested family member when there is-

(B) A significant change in the resident’s physical, mental, or psycho-social status (i.e. a deterioration in health, mental or psycho-social status in either life-threatening conditions or clinical complications);
42 C.F.R. 483.75(f)

Nursing assistants shall exhibit competency in resident care skills.
42 C.F.R. 483.25(h)

The facility must ensure that—

(1) The residents environment must remain as free of accident hazards as is possible; and

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All injuries of unknown origin to a resident shall be reported to State authorities.
What to Obtain During the Discovery Phase – Pressure Ulcers

A. *Policies and Procedures*
   - Admission
   - Bathing
   - Bed Specialty – Air Fluidized
   - Call Light
   - Dressing Change: Nonsterile (Clean) and Sterile (Aseptic)
   - Dressing: Calcium Alginate
   - Dressing: Gel/Hydrogel
   - Dressing: Hydrocolloid
   - Dressing: Hypertonic Saline Gauze/ Sodium Chloride Impregnated
   - Dressing: Transparent Film
   - HS Care – PM Care
   - Incontinence Care
   - Documentation Guidelines for the Clinical Record
What to Obtain During the Discovery Phase – Pressure Ulcers

B. Incident Reports

C. Medical Director Agreement

D. In-Services

E. Employee Files

F. Disciplinary Actions

G. All Reported Deficiencies 2-3 years before and 1 year after residency of your client
PLEASE NOTE THAT THERE ARE SIGNIFICANT GREATER INTERACTIONS OF THE VARIOUS F TAGS WITH THE REGULATION:

F314 PRESSURE SORES AND TREATMENT
F272 COMPREHENSIVE ASSESSMENT
F279 COMPREHENSIVE CARE PLANS
F282 CARE PER CARE PLAN
F 314 PRESSURE SORES AND TREATMENT
F 272 COMPREHENSIVE ASSESSMENT
F 279 COMPREHENSIVE CARE PLANS
F 282 CARE PRE CARE PLAN
F 157 NOTIFICATION OF CHANGES
F 280 COMPREHENSIVE CARE PLAN REVISIONS
CONT.

F 281 SERVICES TO MEET PROFESSIONAL STANDARDS

F 309 QUALITY OF CARE

F 353 SUFFICIENT STAFF

F 385 PHYSICIAN SUPERVISION

F 501 MEDICAL DIRECTOR
REVIEW:
WWW.MEDICARE.GOV/NHCMPARE.ORG