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**THEORY TO FACT:**  
**MEDICAL RECORD ANALYSIS**

Plaintiff or defense, let our experience with and knowledge about the health care system work for you.

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**Use These Red Flags to Identify Meritorious Medical Malpractice Cases More Efficiently**

A man calls your office and tells you that his loved one died in the hospital. He is not sure how or why, but he believes that it should not have happened. Would you even be interested in looking into this potential case for merit?

Sometimes the circumstances surrounding allegations are red flags indicating the need for a merit review. Then a determination can be made about the actual damages involved. Ask the following questions to help identify red flags that warrant further investigation:

- How healthy was the person before hospitalization? If the person was relatively healthy, this is a red flag.
- Was the hospitalization for an elective procedure? If yes, this is a red flag. Death is not a usual outcome for elective procedures.
- Did the health care providers say or do anything that made the family suspicious? An atmosphere of secrecy, confusion, or withholding information can lead family members to think that something did go wrong and, many times, there has been a breach in standards of care.
- Is the man consistent with his perception of the events? If the person's story seems credible and makes sense, this is a red flag.

It is more cost-effective to identify red flags to avoid missing meritorious cases or to avoid wasting resources on unfounded cases.

**The Do's and Don'ts: Standards of Care**

If standards of care (SOC) were listed in a book titled, *Standards of Care*, then substandard healthcare would certainly be easier to identify.



The best way to locate and identify breaches in SOC is to have a Certified Legal Nurse Consultant® (CLNC®) analyze the medical records. He or she will be able to identify issues that support allegations and possible defenses and problems. Do locate SOC with:

- State and federal agencies
- Accreditation organizations
- Medical and nursing practice acts or other ancillary services
- Professional associations
- Medical and nursing literature
- Healthcare facility policies and procedures

The CLNC® will be able to analyze if a facility's policies and procedures are consistent with the SOC prevalent at the time of the allegations. The medical experts in a case are not necessarily the best persons to perform this research. CLNC®s quickly determine merit and can assist in locating the appropriate experts for the case.

Finally, the sieve that SOC need to be filtered through is the

reasonable and prudent person concept:

*A standard of care holds a person of exceptional skill or knowledge to a duty of acting as would a reasonable and prudent person possessing the same or similar skills or knowledge under the same or similar circumstances (Core Curriculum for Legal Nurse Consulting, Vickie Milazzo Institute).*

It is important not to confuse "I would not have done it that way" with a breach in SOC. Just because healthcare providers do not agree on a plan of care or a procedure, that does not mean there is a breach in SOC. Heed the following don'ts when applying SOC:

- Don't let SOC complicate your case; remember the prudent person concept
- Don't exclusively rely on your experts to identify and apply SOC
- Don't confuse different medical methodologies with breaches in SOC
- Don't use an individual to review your medical records if the health issues are not in his or her area of expertise; have a CLNC® do this for you



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