Risk Management for Pressure Ulcers: When the Family Shows Up With a Camera

Jeffrey M. Levine, MD, AGSF, CMD, Fay Savino, RN, MA, Marilyn Peterson, RNC, MSN, and Carolyn Reimach Wolf, Esq., MBA, MS

Pressure ulcers, although sometimes unavoidable, are frequently viewed as a failure of the health care system. Private civil lawsuits alleging malpractice or negligence related to pressure ulcers are becoming increasingly common. Because of their graphic nature, a photograph of a wound may add value to a plaintiff’s case whether or not a negligent act has truly occurred. When the family shows up with a camera, caregivers should be “on notice” that a lawsuit may occur. This applies not only to nursing homes, but to any setting in which pressure ulcers occur including hospital, rehabilitation facility, home care, or hospice. When the threat of litigation arises, we recommend steps that include reestablishing trust with the family, reassessing the patient, reevaluating the care plan, documenting problem behaviors, and incorporating Quality Improvement principles. (J Am Med Dir Assoc 2008; 9: 360–363)

Keywords: Pressure ulcer; risk-management; quality care; prevention; healthcare systems

Pressure ulcers are sometimes viewed as a failure of the health care system. Whether in a nursing home, hospital, or at home, nurses and doctors are frequently blamed. This has produced a debate as to the limits of prevention technology in the face of advanced illness, and a possible “floor effect” that prevents the total elimination of pressure ulcers. Regardless of the question of unavoidability, some attorneys have promulgated the assumption that any pressure ulcer indicates negligence, and pressure ulcers have therefore become a major risk management concern. Because of the increasing number of lawsuits being brought by the plaintiff’s tort bar, long-term care facilities have begun to establish risk management programs similar to their acute care counterparts that have had risk management programs since the 1970s. This is reflected in the latest release of the American Medical Directors Association Clinical Practice Guideline for Pressure Ulcers, which has a section devoted to pressure ulcer risk management.

Part of a risk management program is timely recognition of a potentially litigious situation with proactive measures designed to decrease the facility’s liability exposure. For pressure ulcers, this means an effective prevention program, including risk assessment and other elements of a team approach with incorporation of the assessment into an individualized care plan. In addition, the risk control plan includes documentation systems once a pressure ulcer occurs, along with internal systems for monitoring the ulcer, and educational programs for staff, patients, and family members.

Photographs of wounds have “shock value” when produced in court to a panel of lay jurors. The wide availability of digital imaging technologies including cameras on cellular telephones has expanded the use of photographs depicting skin ulcers. Such photographs have at times been introduced as evidence into lawsuits in which facilities and caregivers are accused of negligence. The emotional impact of a graphic color photograph of a pressure ulcer can overshadow logical explanations of risk assessment, pressure relief, and physiologic compromise due to underlying medical conditions. This strategy is thus designed to persuade the juror to conclude, “With something so bad, something must have gone wrong.” This strong emotional component makes defending pressure ulcer malpractice actions more difficult and may expose the defendant to punitive damages.
Although there have been many positive developments in prevention and treatment of pressure ulcers over the past decade, it is unclear how much their prevalence has been affected.\textsuperscript{10} Even with the best prediction measures, care plans, prevention strategies, and high-tech devices, some patients will get pressure ulcers.\textsuperscript{11} When determining the avoidability of pressure ulcers, each case history must be evaluated individually for preexisting illness, comorbidities, and psychosocial factors that led to the ulcer or its worsening. These factors must be balanced with the actions that caregivers took in treating the underlying illness and preventing the pressure ulcer.\textsuperscript{12}

In today's litigious atmosphere, when a family member shows up with the intention of photographing a pressure ulcer, one can assume that the purpose is documentation in preparation for a lawsuit. It is often true that families taking photographs of pressure ulcers are doing so under the advice and supervision of an attorney. Facility staff may interpret this act as a threat—provoking anger, confusion, and defensiveness. If the facility is sued, each caregiver may be subject to subpoena for deposition and/or trial testimony. In the worst case, the nurse, nutritionist, physician, or administrator may be named individually as defendants.

This paper recommends specific institutional steps when a visitor attempts to photograph a pressure ulcer on a patient in your facility (Table 1). The goals should be reestablishment of trust, reviewing the record for the chronology of illnesses and interventions, reassessing the patient, reevaluating the plan of care, and providing comprehensive documentation. If the resident or family presents threatening and/or problematic behaviors, these should be carefully documented in the medical record. Finally, knowledge gained in events leading to the family’s desire to bring suit should be incorporated back into the facility’s system of care to improve quality and prevent future litigation.

### Risk Management for Pressure Ulcers

**Avoid Defensiveness, Anger, and Confrontation**

Defensiveness, anger, and confrontation are counterproductive when dealing with the litigious family (Table 2). It is possible that the family has already been counseled by an attorney, and escalating the situation will not be helpful when the events are recounted in a courtroom. Anger and defensiveness could convince the family member that the facility “has something to hide.” If a family member requests staff assistance with photographing a wound, this request should be passed on to nursing home administration for immediate involvement of medical director, director of nursing, and/or administrator.

**Get the Entire Team Involved, Including Administration**

Each team member has a role in risk management. Staff should learn to recognize litigious behavior, exchange information, and make attempts to provide counseling and intervention in a proactive manner. When a litigious family is identified, it is best to confer with administration and meet with the entire team. Attorneys often instruct families who are preparing a lawsuit to keep detailed diaries with names of personnel and detailed chronology of events. Whether the team member is a physician, nurse, social worker, or administrator, maintaining quality of care is equivalent to risk management. Therefore, professionalism and a team approach should be maintained, while avoiding an atmosphere of blame and finger pointing.

**Attempt to Reestablish Trust with the Family and Patient**

Nursing homes are objects of distrust in the public mind, which contributes to a litigious atmosphere in this arena. When a family wishes to sue a facility there is an assumption of broken trust. Frequent meetings with the family in an open and conciliatory manner can help reestablish trust, particularly if the meeting takes place with authority figures such as physicians and/or administrative personnel. New interventions such as nutritional measures or topical treatments should be discussed, as well as realistic prognosis for the patient and wound.

Many of these risk management steps are the same measures taken with good care. When proceeding with care plan revision, keep the family informed either individually or in regularly scheduled interdisciplinary meetings. Sometimes multiple family members request information, which can promote misunderstanding and miscommunication. When this occurs, it is useful to assign the task of communication to a single family representative.

**Educate the Family and Provide Realistic Goals**

Families should always be informed in a timely manner when a pressure ulcer occurs. The family should be educated

### Table 1. Summary of Risk Management Measures for Pressure Ulcers

<table>
<thead>
<tr>
<th><strong>Avoid Defensiveness, Anger, and Confrontation</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>DO</td>
</tr>
<tr>
<td>Involve the doctor and medical director</td>
</tr>
<tr>
<td>Be cooperative with the family</td>
</tr>
<tr>
<td>Be honest with the family</td>
</tr>
<tr>
<td>Be realistic with the plan</td>
</tr>
<tr>
<td>Get social services involved</td>
</tr>
<tr>
<td>Document problem behaviors</td>
</tr>
</tbody>
</table>

**Table 2. Working with the Litigious Family**

<table>
<thead>
<tr>
<th><strong>DO</strong></th>
<th><strong>DON’T</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Involve the doctor and medical director</td>
<td>Avoid the family</td>
</tr>
<tr>
<td>Be cooperative with the family</td>
<td>Be defensive</td>
</tr>
<tr>
<td>Be honest with the family</td>
<td>Make excuses</td>
</tr>
<tr>
<td>Be realistic with the plan</td>
<td>Give false hopes</td>
</tr>
<tr>
<td>Get social services involved</td>
<td>Argue with the family</td>
</tr>
<tr>
<td>Document problem behaviors</td>
<td>Alter the record</td>
</tr>
</tbody>
</table>
regarding pressure ulcers and their risk factors and interventions. Realistic goals should be discussed, particularly for those residents with end-stage dementia or other terminal condition. In this regard, a palliative care approach may be preferable, avoiding repeated hospital transfers and invasive, heroic procedures. Such a strategy may require caregivers familiar with end-of-life decision making such as hospice personnel. 

**Review the History and Reassess the Patient**

Resident reassessment should be done whenever a nosocomial pressure ulcer occurs. Interdisciplinary staff, including the physician or medical director, should review the chronology of events leading up to the ulcer, including medical history, recent changes in condition, functional decline, or invasive procedures. There should be a timely reassessment of nutritional status and caloric intake, and review of advance directives. Pressure relief strategies should be reassessed, with consideration given to alternative pressure relief devices. This review and reassessment should be well documented in a comprehensive note.

**Reevaluate the Care Plan**

Many facilities use computerized care plans that require supplemental resident-specific entries. The best care plan is individualized, resident-specific, and updated in a timely manner to best meet the needs of the resident. The care plan meeting—either annual, quarterly, or significant change evaluation—is an excellent venue to reevaluate the care plan for how well it is individualized, and check for timely updates. Many disciplines have a role in pressure ulcer prevention and treatment including rehabilitation therapists and nutritionists as well as nurses and medical practitioners. These roles should be specifically spelled out under the care plan.

**Obtain Proper Studies and Consultations**

The physician can aid in the risk management effort by obtaining proper laboratory studies and subspecialty consultations. For example, when a patient is resistive to care or has poor caloric intake possibly from depression, a psychiatric consultation may be in order. A nursing home resident with swallowing difficulty may benefit from a speech language pathologist evaluation and swallowing studies. For ulcers of the lower extremities, physicians should consider noninvasive vascular studies such as pulse-volume recordings (PVRs), ankle-brachial index (ABI), or Doppler studies to determine the extent of underlying atherosclerotic peripheral vascular disease (PVD).

**Document Problem Behaviors and Provide Appropriate Interventions**

Some residents refuse care, whether it is refusal to eat, take medication, or comply with a pressure relief regimen. Simply documenting noncompliant behavior in the medical record does not suffice as a risk management measure. Noncompliant behavior should be assessed and care planned, with continued interventions indicating that facility staff explored alternative strategies to provide proper care to the resident. Some family members behave in a threatening or intrusive manner that can disrupt the process of administering care. Nonconfrontational administrative involvement can be supplemented by counseling by social worker and/or medical director, director of nursing, or administrator.

All threatening and intrusive behaviors as well as attempts to deal with it should be documented in narrative form within the medical record. In the record it is important to note date and time of specific events, documenting quotes of statements made. We encourage objectivity and consistency in the documentation, while avoiding labels and angry statements. Document family behaviors such as interference with care, unauthorized treatments or leaves of absence, abusive verbalizations, and threats to staff. In addition, we recommend developing a care plan for dealing with a dysfunctional or threatening family.

**Establish a Feedback Loop for Quality Improvement**

It is most important to learn from one’s experiences and build a better quality of care for future residents. For pressure ulcers this should include a formalized, continuously operating system of Quality Improvement. The threat of litigation should promote review of policies and procedures regarding pressure ulcer prevention and treatment. The medical director should be involved in teaching the primary care physicians about new regulations and therapeutic principles of wound care. If problems are identified with the resident’s chart, these should be corrected and incorporated into the care of all residents. All staff should be educated with regard to principles of risk management to sharpen skills relevant to preventing claims of malpractice or negligence, and foster more positive attitudes toward residents and families. Quality Improvement activities should also include statistics of adverse outcomes such as pressure ulcers, to identify ongoing ulcer trends.

**CONCLUSIONS**

Pressure ulcers are a recognized indicator of quality care, and the regulatory environment has recently been tightened with revised F Tag 314. Many pressure ulcers are preventable using principles of risk identification, preventive measures, and reassessment when functional status decreases, but there is agreement among experts that this is not always the case. Indeed, cost-containment strategies such as diagnosis-related groups (DRGs) have forced sicker patients into nursing homes who are at greater risk for poor outcomes such as pressure ulcers. Despite evidence that not all pressure ulcers are avoidable, some plaintiff attorneys erroneously claim that any pressure ulcer is an indicator of medical negligence. When the family shows up with a camera, one can assume that trust has been broken and a lawsuit may occur. The team’s goal should be reestablishing trust with the family and patient, education regarding realistic goals, and implementing a reasonable care plan for the resident. Lessons learned from threats of litigation should be incorporated into the care of all residents with the goal of improving quality. Every pressure ulcer may not be avoidable, but all nursing home residents deserve compassion, dignity, and the best quality of services.
available with the resources that we possess. This requires the proactive commitment, support and participation of everyone working in the long-term care arena. By incorporating this approach as an adjunct to the facility’s overall risk management strategy, long-term care facilities will place themselves and their practitioners in a position of reduced risk and increased defensibility. Those who benefit most from risk management in this area are the residents served. Effective risk management translates into effective prevention of the potential suffering and comorbidity associated with pressure ulcers in the long-term care setting.

REFERENCES

12. F-Tag 314, CFR 42, §483.25 (c) Quality of Care, Pressure ulcers.