Doing it right – and proving it: Medical-legal issues for phlebotomists

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A phlebotomist enters room and puts on gloves used for previous venepuncture. Without introducing himself or checking the requisition form, the phlebotomist extends the patient’s arm and applies alcohol rub to puncture site – over the basilic vein. The phlebotomist punctures the adjacent artery and nerve. Screaming in pain and with blood spurting, the patient grabs the needle and jabs from the phlebotomist in the eye, blinding him. A review finds that this patient wasn’t supposed to be giving blood, and the previous patient had hepatitis B.
Warning!

Please note that what I say during this presentation is for information purposes only. This is not legal advice, and you should not rely on what I say in making any specific decisions about the manner in which you practice or perform your work duties.
How Law of Negligence Makes phlebotomists Accountable:

- How does the law determine negligence?
  - Duty of Care
  - Breach of Duty
  - Damages
  - Causation
Duty of Care

- To whom do you owe a duty of care
  - To your patient
  - To your employer
  - To your colleagues
  - To the public at large
Duty of Care

- Legal basis of the duty of care
  - The “Neighbour” Principle
Breach of Duty

• How do we measure duty of care?
  ○ Professional standard
    ✷ Profession sets its own standards, through practice, guidelines, and protocols
Breach of Duty

How does a court know the standard?
- Expert gives evidence in court - to judge
Injury

- Damages
  - Physical Pain and Suffering
  - Psychological Pain and Suffering
  - Medical expenses
  - Loss of earnings
  - Out-of-pocket expenses
Causation

- On the balance of probabilities:
  - Did the breach of duty cause the injury?
  - Was the injury foreseeable because of the breach?
Accountable to Law of Confidentiality

- Basis of Confidentiality
  - The Constitution
    - An “unenumerated” right under Article 40, linked to right to privacy

- Upholding Confidentiality
  - Patient
Breaching Confidentiality

- Breaching confidentiality:
  - patient says it’s okay
  - patient management requires it
  - the law says so
  - to relative for benefit of patient
  - to outsider to protect patient or possible victim
Accountable to Law of Consent

• Basis of consent
  ○ An “unenumerated” right under Article 40, linked to right to bodily integrity

• Upholding consent
  ○ To protect patient
Consent

Requirements for a valid consent:

- Patient must be competent
- Patient must receive appropriate information
- Patient must understand information
- Patient must consent voluntarily
Consent

- Competence
  - Age
    - 16 years of age or older
    - Parent for child - with possible exceptions
  - Mental competence
    - Does the patient understand?
Consent

- Information
  - Enough
  - Pertinent to the decision to consent:
    - Why am I giving blood?
    - Is it necessary?
    - What are major side-effects?
Consent

- Understood
  - Does patient seem to take information in?
  - Does patient seem confused?
  - Is patient given chance to ask questions?
  - Can you answer the questions?
  - Are your answers accepted by patient?
Consent

- Voluntary
  - Is there any pressure on patient to consent from:
    - You
    - Colleague
    - Doctor
    - Nurse
If a patient can’t say “No!” it’s not a valid consent.