

# NURSING LIABILITY TRENDS

**A Review of CNA Closed Claims Study and Risk  
Management Techniques**

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# CHANGING ENVIRONMENT

## Custodian Liability vs. Clinician Liability

The acceptance of nursing professionalism has changed the dynamics of litigation against nurses

The traditional allegations involving a custodial responsibility has evolved into a clinician responsibility

## Examples of custodial allegations

- Failure to respond to call light resulting in a fall
- Failure to advise physician of changes during labor
- Failure to turn patient resulting in decubitus ulcer
- Medication administration error

# CUSTODIAL VS. CLINICIAN

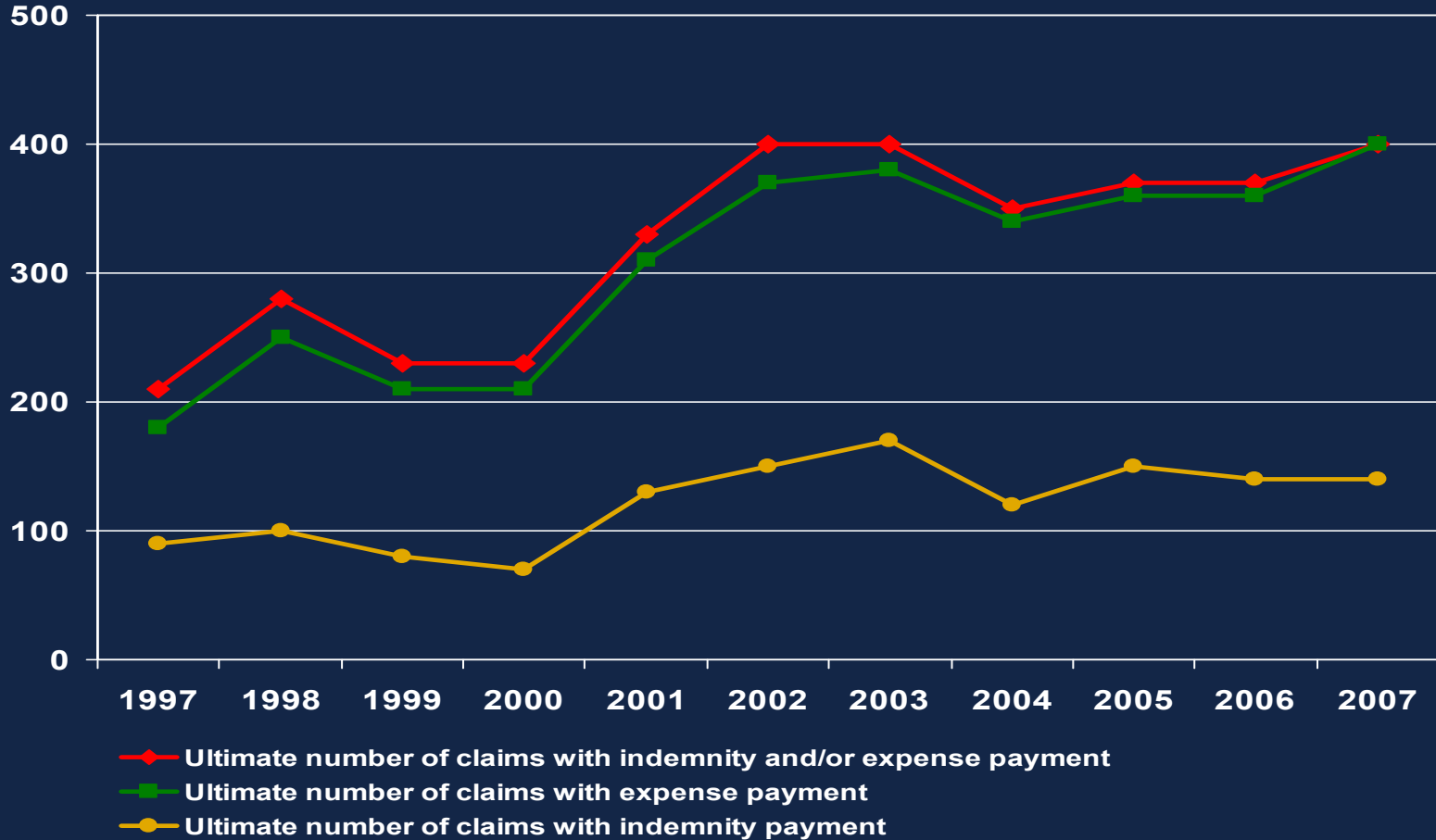
## Examples of allegations involving nurse as clinician using professional judgment in the course of treatment

- Failure to change care plan for patient at risk for falls
- Failure to properly interpret fetal monitor strips
- Failure to take appropriate measures to prevent decubitus
- Failure to question inaccurate medication order
- Failure to appreciate and act on acute cardiac symptomatology

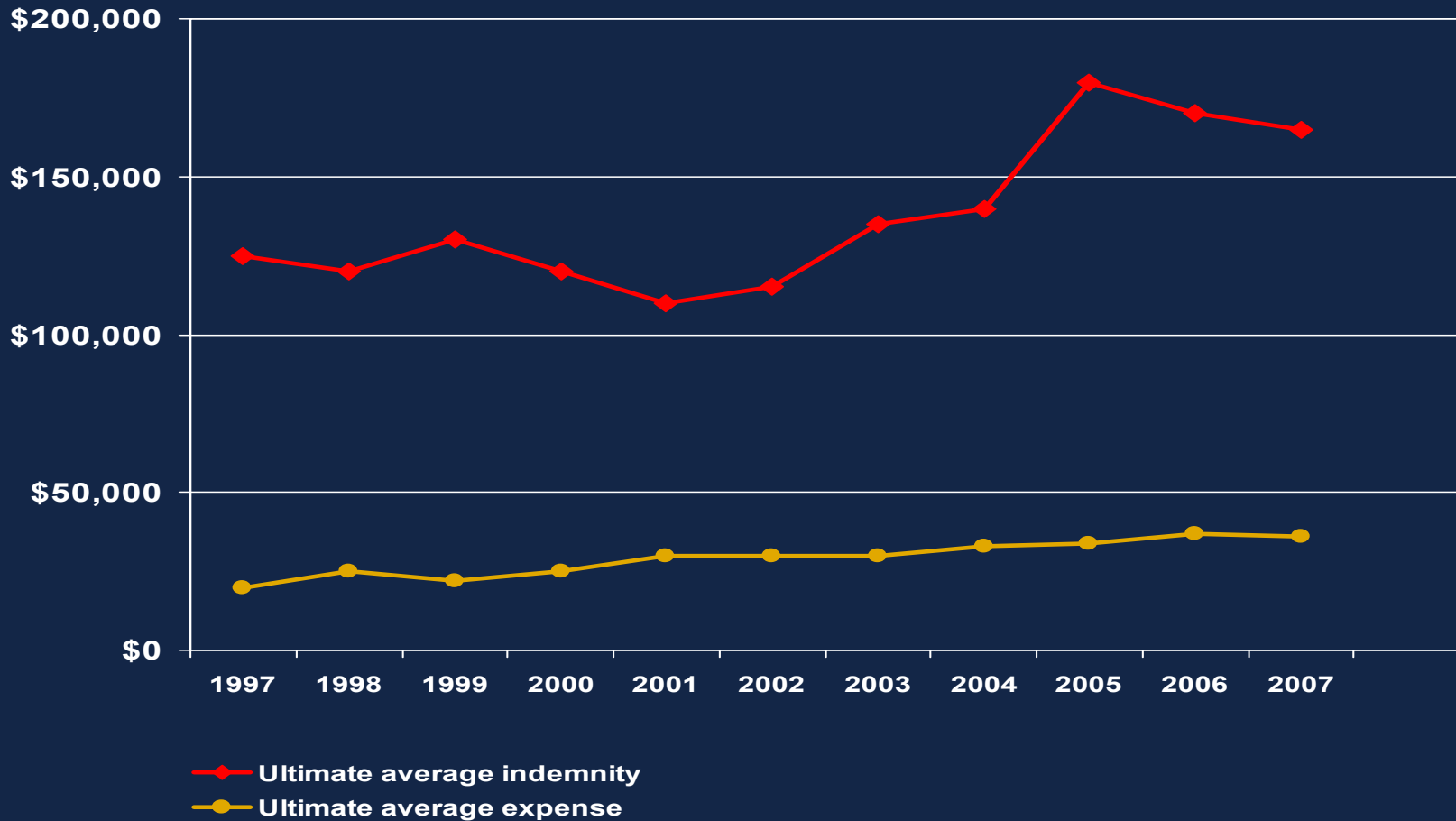
# NURSING LIABILITY TRENDS

- Benchmarking Data
- CNA Closed Claims 1997 to 2007
- Sample size 8,151 closed claims
- Professional Liability claims
- Indemnity payments of greater than \$10,000
- Frequency graphs include open and closed claims
- Does not include Nurse Practitioner claims
- Study available at [www.CNA.com](http://www.CNA.com)

# ULTIMATE NUMBER OF CLAIMS BY YEAR OF LOSS



# ULTIMATE SEVERITY (AVERAGE PAID) BY YEAR OF LOSS



# CLAIMS BY LICENSURE TYPE

(Closed Claims with Paid Indemnity of  $\geq$  \$10,000)

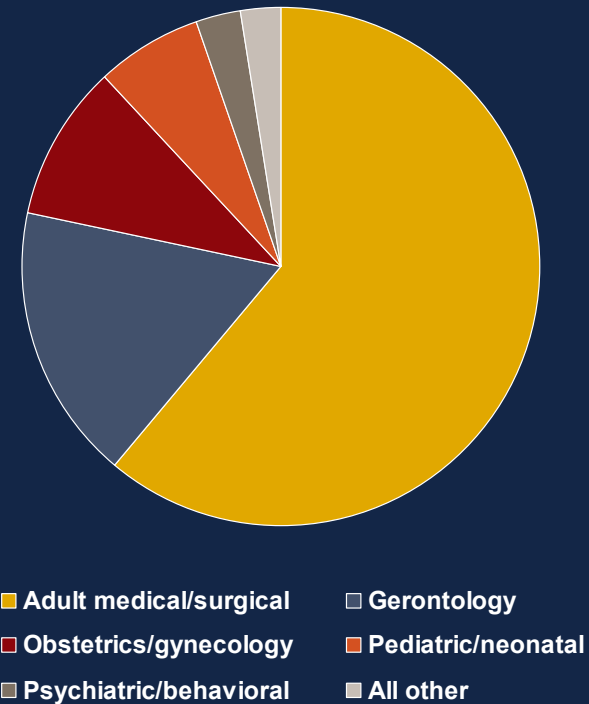
Licensure type	Total paid indemnity	Average paid indemnity
Licensed practical nurse	\$9,477,929	\$163,413
Registered nurse	\$59,402,380	\$149,252
<b>Overall</b>	<b>\$68,880,309</b>	<b>\$151,053</b>



# FREQUENCY BY NURSE SPECIALTY

(Open and Closed Claims)

Nurse specialty	Percentage of total claims
Adult medical/surgical	60.1%
Gerontology	17.7%
Obstetrics/gynecology	9.9%
Pediatric/neonatal	7.0%
Psychiatric/behavioral	2.7%
Adolescent	14%
Urology/renal	06%
Public/community health	0.3%
Clinical research	0.1%
Other	0.1%
<b>Total</b>	<b>100%</b>





# SEVERITY BY NURSE SPECIALTY

(Closed Claims with Paid Indemnity of  $\geq$  \$10,000)

<b>Nurse specialty</b>	<b>Percentage of closed claims</b>	<b>Total paid indemnity</b>	<b>Average paid indemnity</b>
Obstetrics/gynecology	10.3%	\$15,762,609	\$335,375
Pediatric/neonatal	9.2%	10,436,416	248,486
Adolescent	1.8%	1,810,000	226,250
Urology/renal	1.1%	935,000	187,000
Psychiatric/behavioral	2.4%	1,804,310	164,028
Adult medical/surgical	56.4%	29,333,731	114,139
Gerontology	18.2%	8,601,927	103,638
Public/community health	0.4%	171,316	85,658
Other	0.2%	25,000	25,000
<b>Overall</b>	<b>100%</b>	<b>\$68,880,309</b>	<b>\$151,053</b>

# SEVERITY FOR OBSTETRICS/GYNECOLOGY BY ALLEGATION

**(Closed Claims with Paid Indemnity of  $\geq$  \$10,000)**

<b>Allegation related to</b>	<b>Percentage of closed claims</b>	<b>Total paid indemnity</b>	<b>Average paid indemnity</b>
Scope of practice	2.1%	\$970,000	\$970,000
Assessment	8.5%	2,550,000	637,500
Monitoring	10.6%	2,851,667	570,333
Treatment and care management	76.6%	9,366,042	260,168
Medication administration	2.1%	24,900	24,900
<b>Overall</b>	<b>100%</b>	<b>\$15,762,609</b>	<b>\$335,375</b>

# FREQUENCY OF CLAIMS RELATED TO FETAL BIRTH TRAUMA BY INJURY

(Open and Closed Claims)

Injury	Percentage of fetal birth trauma claims
Birth-related brain damage	63.3%
Fetal death	30.0%
Other birth trauma	5.7%
<b>Total</b>	<b>100%</b>



# SEVERITY OF CLAIMS RELATED TO FETAL BIRTH TRAUMA BY INJURY

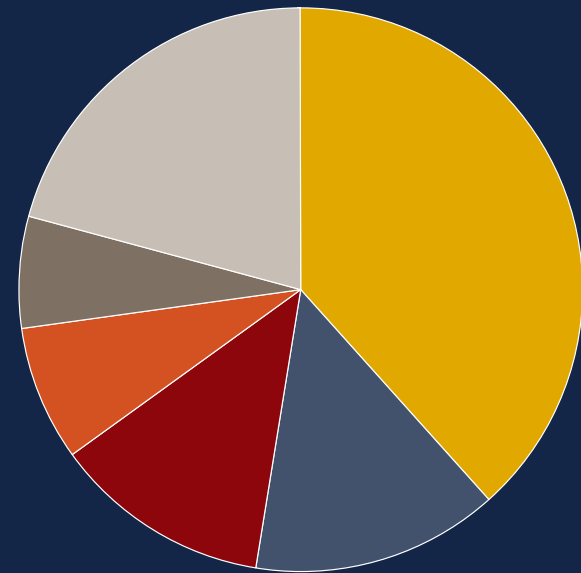
**(Closed Claims with Paid Indemnity of  $\geq$  \$10,000)**

<b>Injury</b>	<b>Percentage of closed claims</b>	<b>Total paid indemnity</b>	<b>Average paid indemnity</b>
Birth-related brain damage	65.2%	\$12,978,031	\$432,601
Other fetal birth trauma	30.4%	2,564,167	183,155
Fetal death	4.3%	158,000	79,000
<b>Overall</b>	<b>100%</b>	<b>\$15,700,198</b>	<b>\$341,309</b>

# FREQUENCY BY LOCATION

## (Open and Closed Claims)

<u>Location</u>	<u>Percentage of total claims</u>
Hospital-inpatient	38.2%
Aging services residential facility	14.2%
Patient's home	12.7%
Hospital emergency department	7.8%
Physician office	6.4%
Hospital-inpatient perinatal	5.4%
Prison	4.9%
Ambulatory surgical center	2.8%
Pediatric long term care residential facility	1.6%
Hospital-outpatient	1.1%
Psychiatric/behavioral Clinic-outpatient	1.0%
Nurse private practice	0.5%

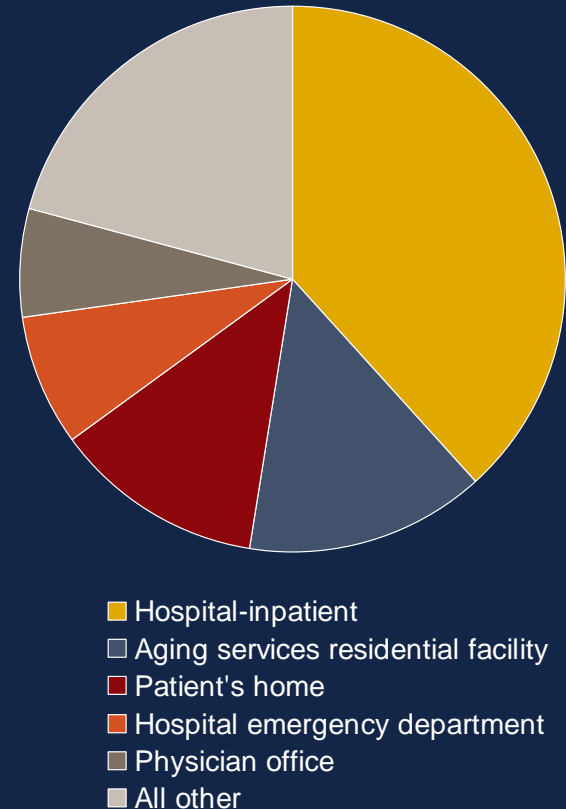


- Hospital-inpatient
- Aging services residential facility
- Patient's home
- Hospital emergency department
- Physician office
- All other

# FREQUENCY BY LOCATION *(continued)*

## (Open and Closed Claims)

<b>Location</b>	<b>Percentage of total claims</b>
School (nursery school through college)	0.5%
Dialysis	0.4%
Radiology	0.4%
Other physician/licensed independent practitioner office	0.4%
Methadone clinic	0.3%
Clinical research facility	0.1%
Retail healthcare delivery sites	0.1%
Military facilities	0.1%
Urgent care or walk-in care center	0.1%
Other	0.1%
<b>Total</b>	<b>100%</b>



# SEVERITY BY LOCATION

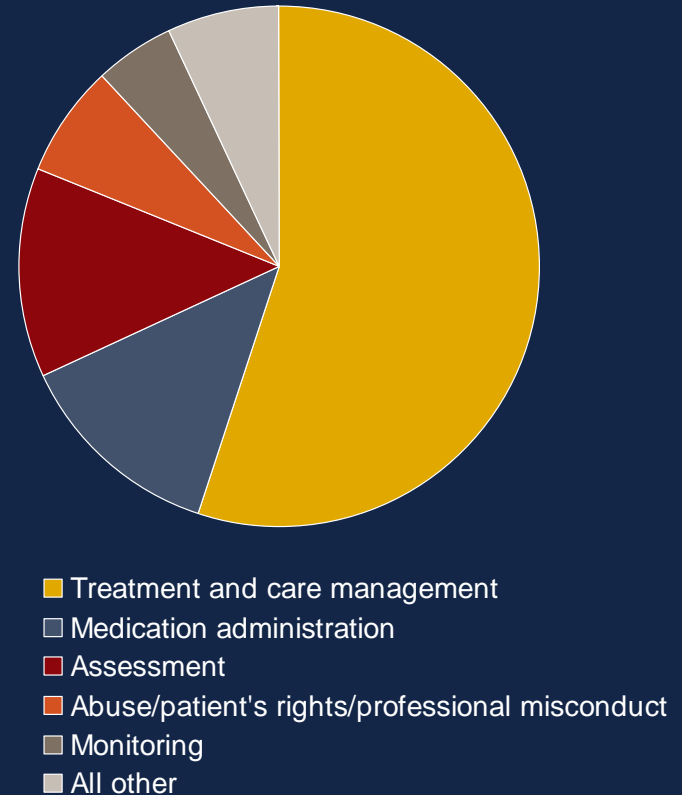
**(Closed Claims with Paid Indemnity of  $\geq$  \$10,000)**

Location	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Hospital-inpatient perinatal services	6.4%	\$7,984,376	\$275,323
Psychiatric/behavioral	1.1%	1,342,500	268,500
Hospital-outpatient	1.8%	2,067,500	258,438
Dialysis	0.7%	700,000	233,333
Radiology	0.4%	462,500	231,250
Methadone clinic	0.4%	375,000	187,500
Patient's home	16.0%	13,156,724	180,229
Hospital-inpatient	33.8%	25,169,094	163,436
Prison	4.2%	2,629,125	138,375
Hospital emergency department	7.0%	3,615,136	112,973
Physician office	9.4%	4,221,750	98,180
Pediatric long term care residential facility	2.6%	1,151,987	95,999
Urgent care or walk-in care center	0.2%	93,750	93,750
Aging services residential facility	12.7%	5,246,617	90,459
Ambulatory surgical center	2.0%	521,750	57,972
Other physician/licensed independent practitioner office	0.7%	90,000	30,000
Clinic-outpatient	0.2%	17,500	17,500
Nurse private practice	0.4%	35,000	17,500
<b>Overall</b>	<b>100%</b>	<b>\$68,880,309</b>	<b>\$151,053</b>

# FREQUENCY BY ALLEGATION CATEGORY

(Open and Closed Claims)

<u>Allegation category related to</u>	<u>Percentage of total claims</u>
Treatment and care management	55.0%
Medication administration	13.0%
Assessment	13.0%
Abuse/patient's rights/ professional misconduct	7.0%
Monitoring	5.0%
Equipment	3.0%
Diagnosis	2.0%
Scope of practice	1.0%
Other	1.0%
<b>Total</b>	<b>100%</b>





# SEVERITY BY ALLEGATION CATEGORY

(Closed Claims with Paid Indemnity of  $\geq$  \$10,000)

Allegation category related to	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Scope of practice	1.3%	\$2,645,125	\$440,854
Monitoring	5.7%	7,892,817	303,570
Equipment	2.9%	2,954,992	227,307
Assessment	12.3%	9,620,862	171,801
Treatment and care management	55.0%	35,070,311	139,722
Medication administration	15.6%	8,723,203	122,862
Abuse/patient's rights/professional misconduct	4.4%	1,457,999	72,900
Documentation	0.4%	111,250	55,625
Nurse and patient communication	0.2%	50,000	50,000
Diagnosis	1.3%	251,250	41,875
Other	0.2%	37,500	37,500
Confidentiality	0.7%	65,000	21,667
<b>Overall</b>	<b>100%</b>	<b>\$68,880,309</b>	<b>\$151,053</b>

# Risk Management Techniques

## Scope of Practice:

- **Comply with applicable Nurse Practice Acts**
- **Comply with licensure requirements and other regulatory requirements**
- **Maintain appropriate limits of Insurance**
- **Provide timely insurance reporting of potential claims**
- **Review chain of command policies annually**

# Risk Management Techniques

## Nursing Competencies:

**Maintain competencies through continuing education**

**Encourage additional education**

**Require annual skills assessments and demonstrations**

**Seek out new clinical learning tools and programs**

**Communicate with nursing staff regarding their learning needs**

# Risk Management Techniques

## Health Information Records:

- All entries legible and in ink
- Compliance with all documentation policies
- Avoid subjective comments
- No blanks
- No late entries, or compliance with late entry policy
- Contact Risk Management before preparing a written addendum
- Use only approved methods for correction
- No alteration of records for any reason

# Risk Management Techniques

## Other documentation issues:

- Remember to document allergies
- Include vaccine tracking
- Current and past medications
- Complete nursing assessment
- Document discussion with patient about medical issues
- Document observations during patient contact
- Document patients questions and response to them
- Document review of current problems and symptoms
- Diagnostics tests and labs and responses, utilize chain of command

# Risk Management Techniques

## Informed Consent:

- **Nurses should provide informed consent only for nurse performed procedures, otherwise it is a physician responsibility**
- **For nurse procedures provide:**
  1. **Clear description of current medical condition**
  2. **Detailed description of procedure**
  3. **Discuss risks and benefits**
  4. **Encourage patient to ask questions**
  5. **Document complete discussions**
  6. **Signature, witnessed**

# Risk Management Techniques

## Tests, Referrals and Consultations:

- Assist patient in scheduling if necessary
- Notify physician of delays
- Document efforts to obtain tests if delay occurs
- Notify physician of abnormal findings
- Facilitate transfer of medical information to practitioners if necessary

# Conclusion

**Claims and Quality Feedback loop**

**Benchmarking groups and individual studies**

**Loss prevention initiatives**

**Encourage professional behavior and continuing education**

**Teaching on scope of practice issues**

**Refresh and continue efforts on documentation training**

**Communication and documentation on labs and tests**

**Training on chain of command issues**

**Documentation of competencies and skill evaluations**