CASES FOR CONCERN

LISA A. MILLER, CNM, JD

Picture yourself as a risk management consultant as we look at case studies today…

What insights do you have regarding error?

What can we do about cognitive bias?

How can we effectively learn from preventable poor outcomes?

How will our care be challenged or questioned in deposition?

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WHO AM I?

RN since 1979

CNM since 1982

Lawyer since 1991

Currently self-employed as a perinatal educator

Practice experience includes all levels of perinatal care, as well as academic practice at Northwestern University Medical School

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DISCLOSURE

In the interest of full disclosure, I wish to disclose my relationship with Clinical Computer Systems, Inc., as a consultant and co-developer of their "E-Tools" software.

I served on the AWHONN board of directors from 2016 - 2018, however nothing I present today should be construed as the position or opinion of AWHONN. I present information today as a perinatal educator.

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DISCLAIMER

Although I am a member of the Illinois State Bar Association and a licensed attorney in the state of Illinois, I am here today as a *nurse educator*, not a lawyer.

Nothing in the program should be construed as legal advice. In other words, if you need legal advice, retain a practicing attorney!

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CRITICAL THINKING CONCEPTS FOR CLINICIANS

- The examination of beliefs or knowledge in light of the evidence that supports it
- Involves an ability to gather and interpret data and apply principles of logic
- Requires familiarity with cognitive bias and the potential problems with bias in clinical practice
- Requires an ongoing commitment to evaluation of processes and beliefs in light of new and developing evidence; an ability to alter practice patterns and challenge assumptions when the evidence warrants

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HUMAN FACTORS APPROACH

TJC cites communication as the most frequent source of error in perinatal care

Looks at systems, versus individuals

Avoids "blaming" and seeks prevention strategies to avoid future errors

Differentiates between active failures (the sharp end) and latent failures (administration, design, training, etc.)

Illustrated best by the "Swiss Cheese" model of organizational accidents described by Reason

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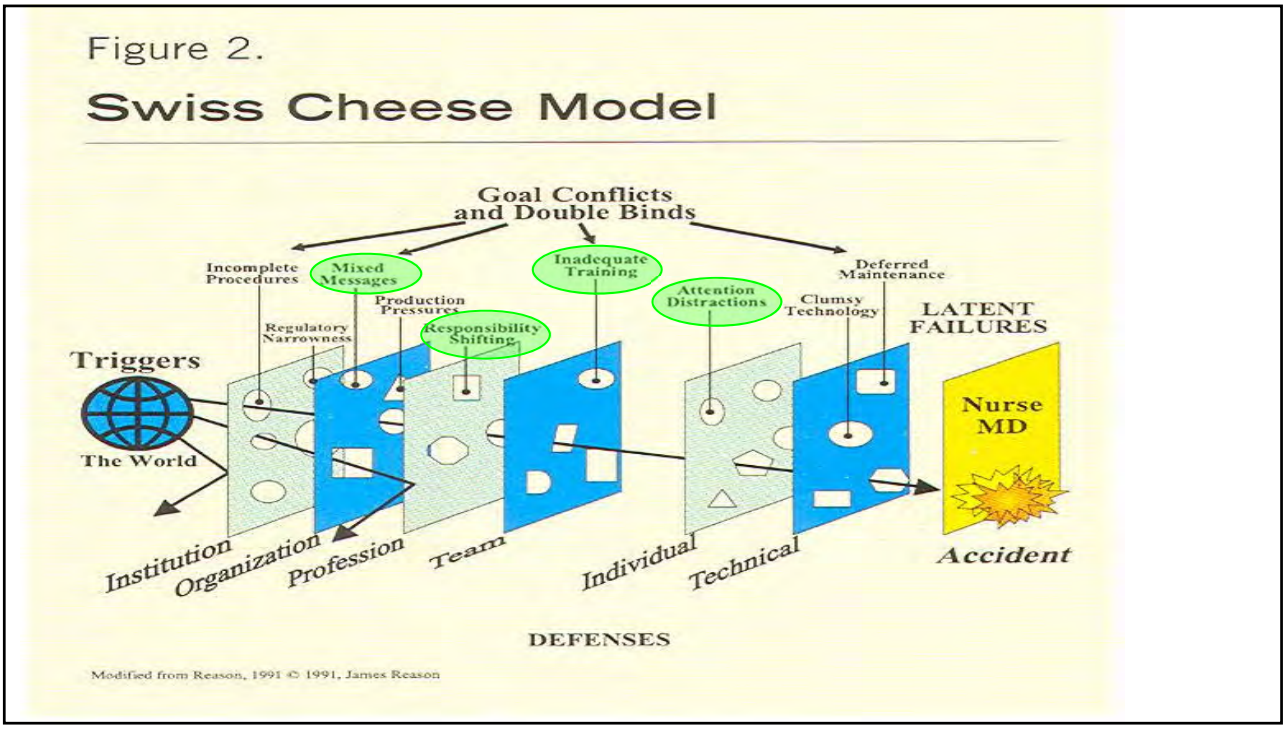

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TYPES OF ERRORS

Slips or Lapses — most medication errors

Rule-based errors — protocols, standardization

Knowledge-based errors — lack of knowledge vs. expert error

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ARE WE ANY DIFFERENT?

Review

March 27, 2019

Potential Consequences of Patient Complications for Surgeon Well-being

A Systematic Review

Sanket Srinivasa, PhD, FRACS[1]; Jason Gurney, PhD[2]; Jonathan Koea, MD, FRACS[1]

Author Affiliations

JAMA Surg. Published online March 27, 2019. doi:10.1001/jamasurg.2018.5640

Key Points

Question What role do patient complications play in surgeon well-being?

Findings This systematic review of 9 studies (10 702 unique participants) demonstrated that the occurrence of patient complications adversely affected surgeons' psychological well-being and their professional and personal lives.

Meaning Results of this study suggest that patient complications adversely affect surgeons' health, and departments, institutions, and professional organizations must acknowledge this and develop strategies to educate and support surgeons in managing this part of their professional lives.

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FROM "SILENCE KILLS"

53% of nurses were concerned about a peer's competence, yet only 12% had discussed it

34% of nurses were concerned about a doctor's competence, less than 1% had spoken about it

These held true even when direct harm had been witnessed

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FROM "SILENCE KILLS"

81% of doctors were concerned about a nurses's competence, yet only 8% had discussed it

68% of doctors were concerned about a peer's competence, less than 1% had spoken about it

These held true even when direct harm had been witnessed

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VitalSmarts, AORN, & AACN present:

The Silent Treatment

Why Safety Tools and Checklists Aren't Enough to Save Lives

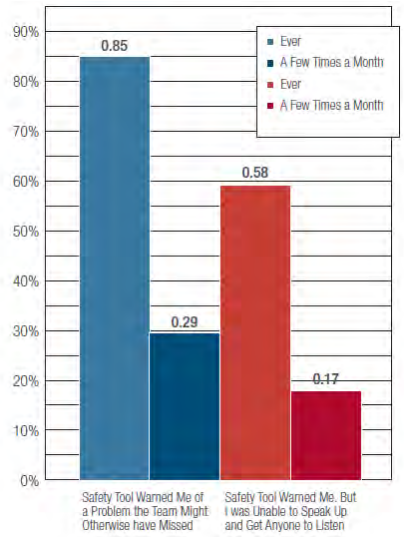
David Maxfield, Joseph Grenny, Ramón Lavandero, and Linda Groah

Imagine you are a nurse who has been given a set of new safety tools that warns you whenever your patients are in danger. That would be powerful, life-saving information, right? But what if nobody listened to you or heeded your warnings? This kind of breakdown is happening in hospitals every day. The quote below is one of 681 collected in the course of this research.

Silence Kills was conducted immediately before AACN's national standards for healthy work environments were released[1]. It identified seven concerns that often go undiscussed and contribute to avoidable medical errors. It linked the ability of health professionals to discuss emotionally and politically risky topics in a healthcare setting to key results like patient safety, quality of care, and nursing turnover, among others.

The Silent Treatment shows how nurses' failure to speak up when risks are known undermines the effectiveness of current safety tools. It then focuses on three specific concerns that often result in a decision to not speak up: dangerous shortcuts, incompetence, and disrespect. *The Silent Treatment* tracks the frequency and impact of these communication breakdowns, then uses a blend of quantitative and qualitative data to determine actions that individuals and organizations can take to resolve avoidable breakdowns.

Background



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Have you ever felt this way when trying to gently point out to a team member that they may have made a mistake or that there may have been a better approach?

Why is it so hard to reduce error?

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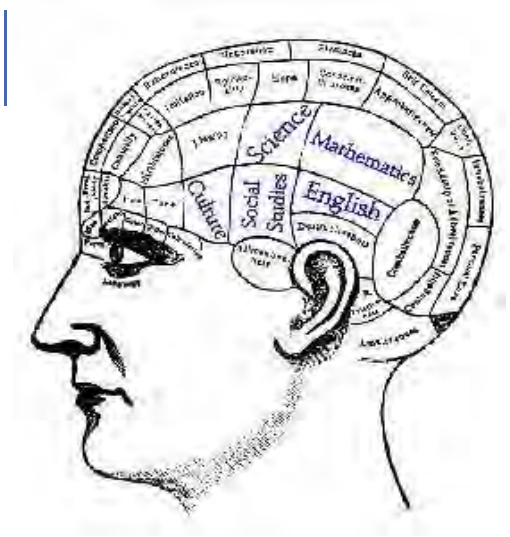

WHAT IF I TOLD YOU IT WAS ACTUALLY THE WAY WE ARE WIRED-

THAT'S RIGHT, IT'S OUR BRAINS THAT MAKE IT DIFFICULT, AND MOST OF US ARE NOT EVEN AWARE OF IT!!

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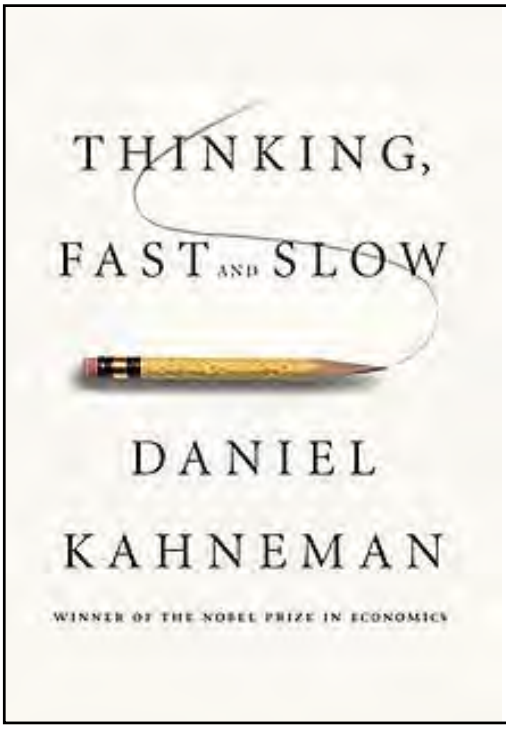

TWO TYPES OF THINKING

SYSTEM 1

- Fast/automatic/easy
- Performs familiar or practiced routines
- Fine for small talk
- Undemanding
- Can perform while tired, sick or stressed
- Impressions/intuitions/feelings
- Susceptible to errors

SYSTEM 2

- Slow/effortful/hard
- Necessary for novel decisions or routines
- Useful for harder questions
- Tiring/draining
- Impaired by fatigue, illness or stress
- Logic/analysis/reflection
- Can override errors through careful thought

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HEURISTICS & COGNITIVE BIASES

Heuristics are "mental shortcuts" – patterns of thinking we have developed that allow us to reach conclusions quickly – they are unconscious and automatically employed.

Cognitive biases are predispositions that can make heuristics fail; ways in which our thought is irrational and prone to error.

Recognizing cognitive biases in clinical decision-making is key to safety and improved outcomes.

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COGNITIVE DISSONANCE

The emotional discomfort human beings feel when they try to hold 2 disparate ideas, beliefs, or opinions in their mind at the same time.

As our mistakes become more serious, the emotional and mental discomfort we feel becomes more intense, and we turn to amazing feats of self-justification to eliminate or reduce the tension.

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OTHER IMPEDIMENTS TO CHANGE

- "Status Quo Bias" – the tendency for people to like things to stay relatively the same.
- "Outcome Bias" – the tendency to judge a decision by its eventual outcome instead of based on the quality of the decision at the time it is made.

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OTHER IMPEDIMENTS TO CHANGE

- "Projection Bias" – the tendency to unconsciously assume that others share the same or similar views, knowledge, or beliefs.
- "Bias Blind Spot" – the tendency not to compensate for one's own cognitive biases.

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BANDWAGON EFFECT

- The tendency to do or believe things because many other people do or believe the same.
- Related to the concepts of groupthink, herd behavior & manias.
- Many common birth practices are related to this bias.

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ATTENTION ISSUES

Sustained attention - the ability to maintain a focus on the current task, even in situations of little intrinsic interest or motivation.

Selective attention - the ability to focus on relevant aspects of a stimulus or task, immune to distraction.

Control of attention - including, for example, the ability to switch attention between different tasks, or inhibit actions that are well-learned or automatic but inappropriate with respect to the current goals.

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TWO KEY STRATEGIES FOR EVERYONE

Competency assessment & ongoing training

- Be open to recognizing limitations/knowledge gaps
- Embrace proving competency
- Use training to force habituation of skills

Improve communication skills

- Multidisciplinary and interdepartmental training
- Recognize cultural and disciplinary barriers to effective and open communication
- Never forget cognitive dissonance and projection bias when discussing clinical issues!

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2015 Institute of Medicine Report

- Recommendation 5: Health care organizations should:

• Adopt policies and practices that promote a nonpunitive culture that values open discussion and feedback on diagnostic performance.

• Design the work system in which the diagnostic process occurs to support the work and activities of patients, their families, and health care professionals and to facilitate accurate and timely diagnoses.

• Develop and implement processes to ensure effective and timely communication between diagnostic testing health care professionals and treating health care professionals across all health care delivery settings.

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IOM RECOMMENDATIONS

Goals for Improving Diagnosis and Reducing Diagnostic Error

- Facilitate more effective teamwork in the diagnostic process among health care professionals, patients, and their families
- Enhance health care professional education and training in the diagnostic process
- Ensure that health information technologies support patients and health care professionals in the diagnostic process
- Develop and deploy approaches to identify, learn from, and reduce diagnostic errors and near misses in clinical practice
- Establish a work system and culture that supports the diagnostic process and improvements in diagnostic performance
- Develop a reporting environment and medical liability system that facilitates improved diagnosis by learning from diagnostic errors and near misses
- Design a payment and care delivery environment that supports the diagnostic process
- Provide dedicated funding for research on the diagnostic process and diagnostic errors

National Academies of Sciences, Engineering, and Medicine 2015. Improving Diagnosis in Health Care. Washington, DC: The National Academies Press.

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What can we do as we move forward?

Recognize the impact of cognitive dissonance and various cognitive biases

Don't be afraid of knowledge gaps, we can assume they are there, find them and work together to correct them

No more silos! Physicians, midwives, and nurses need to work and train *together*

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DEPOSITION SURVIVAL

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DEPOSITION & COMMUNICATION THREE SIMPLE PRINCIPLES

Communication Principle #1: It's not you against them, it's you against you!

Communication Principle #2: Don't take it personally.

Communication Principle #3: Know what you are talking about before you start talking.

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PLAINTIFF'S APPROACH – THREE GUARANTEED AREAS OF QUESTIONING

Your background and education

Basic definitions and physiology, these will also be questioned via EFM tracing review

Communication among team members and timing of communication/notification

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HOW TO SURVIVE A DEPOSITION – 10 TIPS

1. Be prepared…early on!

By this I mean be up to date in your practice. Introductory questions in a deposition will cover basic knowledge issues for your specialty, make sure you are prepared to answer questions related to common skills, such as fetal monitoring or neonatal assessment. Be sure you have kept your certifications and continuing education files current, and be prepared to answer using correct terminology and current practice standards.

2. Be involved actively with your defense.

Your defense attorney is not there to be your friend. You want to make sure they prepare you using the tough questions that they anticipate the plaintiff's attorney will ask in the real deposition. Insist that your defense attorney prepare you at least 1-2 weeks before your deposition date, not on the morning of the deposition (when you will be too nervous to really take in any helpful advice).

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HOW TO SURVIVE A DEPOSITION – 10 TIPS

3. Learn to be a literal thinker and use this skill in listening.

If the attorney asks you "Can you tell me the time?" – there are only two possible answers, "yes" or "no". Don't look at your watch and say "Yes, it is 2:30". We all have a natural tendency to try to give the answer we think is wanted, but in a deposition you want to think carefully and *answer only the question that is asked*, in as succinct a manner as is possible.

4. Take your time.

Do not feel pressured, you can take as much time as you want (and this is probably the only time in your life that will be true!!). Taking a slow deep breath and thinking about the question before you answer will allow you to feel more relaxed and help you follow tip #3, above. So take it slow and easy, this also allows your lawyer to raise an objection to the question prior to you giving an answer.

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HOW TO SURVIVE A DEPOSITION – 10 TIPS

5. Think about your presentation, don't personalize the deposition.

This may be the hardest tip to really follow, as I know it is going to feel personal, no matter what you do or what the circumstances. But you need to come across as the competent professional that you are, so sit up straight, remember the plaintiff's attorney's job is just that, a job, and answer the questions without getting emotional. Preparation with your defense attorney can really help with this step.

6. Do not volunteer information.

See Tip #3, above. ANSWER ONLY WHAT IS ASKED. And yes, this does need to be in here twice, so don't complain about the reinforcement. And do not allow the plaintiff's attorney to use you as an expert regarding care provided by other team members (when you were not involved).

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HOW TO SURVIVE A DEPOSITION – 10 TIPS

7. Pay attention to your attorney.

If the attorney objects to a question, stop and think for a moment. Do you understand the question? You may want to ask for the question to be repeated or rephrased, and you want to look to your attorney who may even instruct you not to answer the question.

8. Know the medicine (or midwifery or nursing) behind the issues.

OK, this is really a part of Tip#1, the being prepared tip. You have to be able to demonstrate your clinical competence through your deposition answers, and the best way to never have a case of the nerves is to know your stuff cold. This means that you have to keep up to date and spend some personal time reading and reviewing materials. AWHONN provides a multitude of resources, both written and on the web, so it is a great way to utilize your membership benefits.

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HOW TO SURVIVE A DEPOSITION – 10 TIPS

9. Realize that "I don't know" and I don't recall" are acceptable, yet distinctly different answers.

"I don't know" means you don't have the knowledge to answer the question, while "I don't recall" means you have the knowledge, but simply cannot remember. For areas within your daily scope of practice, "I don't know" should not really be your answer, unless you mean to say you don't know information that any reasonable nurse in your practice area would have readily available. But under the stress of a deposition, even routine things might be temporarily difficult to recall, a very different scenario than "not knowing".

10. Use the "KISS" vs. the "Kiss off" approach.

KISS stands for Keep It Simple, Silly. Be professional, be concise, demonstrate your clinical competency by providing the correct answers to basic questions, and the deposition will be over in a flash. Remember, it is only one case, it is not your entire career, and under no circumstances should you become emotional or angry. Calm, cool, collected is the way to go!

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