

CHAPTER 4

UNIT 1 SAFE, EFFECTIVE CARE ENVIRONMENT
SECTION: MANAGEMENT OF CARE

CHAPTER 4 *Legal Responsibilities*

Understanding the laws governing nursing practice helps nurses protect clients' rights and reduce the risk of nursing liability.

Nurses are accountable for practicing nursing within the confines of the law to shield themselves from liability; advocate for clients' rights; provide care that is within the nurse's scope of practice; discern the responsibilities of nursing in relationship to the responsibilities of other members of the health care team; and provide safe, proficient care consistent with standards of care.

SOURCES OF LAW

FEDERAL REGULATIONS

Federal laws affecting nursing practice

- Health Insurance Portability and Accountability Act (HIPAA)
- Americans with Disabilities Act (ADA)
- Mental Health Parity Act (MHPA)
- Patient Self-Determination Act (PSDA)

CRIMINAL AND CIVIL LAWS

- Criminal law is a subsection of public law and relates to the relationship between an individual and the government. A nurse who falsifies a record to cover up a serious mistake can be guilty of breaking a criminal law.
- Civil laws protect individual rights. One type of civil law that relates to the provision of nursing care is tort law. (4.1)

STATE LAWS

- Each state has enacted statutes that define the parameters of nursing practice and give the authority to regulate the practice of nursing to its state board of nursing.
- In turn, the boards of nursing have the authority to adopt rules and regulations that further regulate nursing practice. Although the practice of nursing is similar among states, it is critical that nurses know the laws and rules governing nursing in the state in which they practice.
- Boards of nursing have the authority to issue and revoke a nursing license.
- Boards also set standards for nursing programs and further delineate the scope of practice for RNs, practical nurses (PNs), and advanced practice nurses.

LICENSURE

In general, nurses must have a current license in every state in which they practice. The states (about half of them) that have adopted the nurse licensure compact are exceptions. This model allows licensed nurses who reside in a compact state to practice in other compact states under a multistate license. Within the compact, nurses must practice in accordance with the statutes and rules of the state in which they provide care.

4.1 Types of torts

Unintentional torts

NEGLIGENCE: A nurse fails to implement safety measures for a client at risk for falls.

MALPRACTICE (PROFESSIONAL NEGLIGENCE): A nurse administers a large dose of medication due to a calculation error. The client has a cardiac arrest and dies.

Quasi-intentional torts

BREACH OF CONFIDENTIALITY: A nurse releases a client's medical diagnosis to a member of the press.

DEFAMATION OF CHARACTER: A nurse tells a coworker that she believes the client has been unfaithful to her partner.

Intentional torts

ASSAULT

The conduct of one person makes another person fearful and apprehensive

A nurse threatens to place an NG tube in a client who is refusing to eat.

BATTERY

Intentional and wrongful physical contact with a person that involves an injury or offensive contact

A nurse restrains a client and administers an injection against her wishes.

FALSE IMPRISONMENT

A person is confined or restrained against his will

A nurse uses restraints on a competent client to prevent his leaving the health care facility.

PROFESSIONAL NEGLIGENCE

Professional negligence is the failure of a person who has professional training to act in a reasonable and prudent manner. The terms “reasonable” and “prudent” generally describe a person who has the average judgment, intelligence, foresight, and skill that a person with similar training and experience would have.

- Negligence issues that prompt most malpractice suits include failure to:
 - Follow professional and facility-established standards of care.
 - Use equipment in a responsible and knowledgeable manner. **Q5**
 - Communicate effectively and thoroughly with clients.
 - Document care the nurse provided.
 - Notify the provider of a change in the client’s condition.
 - Complete a prescribed procedure.
- Nursing students face liability if they harm clients as a result of their direct actions or inaction. They should not perform tasks for which they are not prepared, and they should have supervision as they learn new procedures. If a student harms a client, the student, instructor, educational institution, and facility share liability for the wrong action or inaction. **(4.2)**
- Nurses can avoid liability for negligence by:
 - Following standards of care.
 - Giving competent care.
 - Communicating with other health team members and clients. **Q16**
 - Developing a caring rapport with clients.
 - Fully documenting assessments, interventions, and evaluations.
 - Being familiar with and following a facility’s policies and procedures.

CLIENTS’ RIGHTS

Nurses are accountable for protecting the rights of clients. Examples include informed consent, refusal of treatment, advance directives, confidentiality, and information security.

- Clients’ rights are legal privileges or powers clients have when they receive health care services.
- Clients using the services of a health care institution retain their rights as individuals and citizens.
- The American Hospital Association identifies patients’ rights in health care settings. See The Patient Care Partnership at www.aha.org.
- Nursing facilities that participate in Medicare programs also follow Resident Rights statutes that govern their operation.

NURSING ROLE IN CLIENTS’ RIGHTS

- Nurses must ensure that clients understand their rights, and must protect their clients’ rights.
- Regardless of the client’s age, nursing needs, or health care setting, the basic tenets are the same. The client has the right to:
 - Understand the aspects of care to be active in the decision-making process.
 - Accept, refuse, or request modification of the plan of care.
 - Receive care from competent individuals who treat the client with respect.

4.2 The five elements necessary to prove negligence

ELEMENT OF LIABILITY	EXPLANATION	EXAMPLE: CLIENT WHO IS A FALL RISK
1. Duty to provide care as defined by a standard	Care a nurse should give or what a reasonably prudent nurse would do	The nurse should complete a fall risk assessment for all clients during admission.
2. Breach of duty by failure to meet standard	Failure to give the standard of care	The nurse does not perform a fall risk assessment during admission.
3. Foreseeability of harm	Knowledge that failing to give the proper standard of care could harm the client	The nurse should know that failure to take fall risk precautions could endanger a client at risk for falls.
4. Breach of duty has potential to cause harm (combines elements 2 and 3)	Failure to meet the standard had potential to cause harm – relationship must be provable	Without a fall risk assessment, the nurse does not know the client’s risk for falls and does not take the proper precautions.
5. Harm occurs	Actual harm to the client occurs	The client falls out of bed and fractures his hip.

INFORMED CONSENT

- Informed consent is a legal process by which a client or the client's legally appointed designee has given written permission for a procedure or treatment. Consent is informed when a provider explains and the client understands:
 - The reason the client needs the treatment or procedure.
 - How the treatment or procedure will benefit the client.
 - The risks involved if the client chooses to receive the treatment or procedure.
 - Other options to treat the problem, including not treating the problem.
- The nurse's role in the informed consent process is to witness the client's signature on the informed consent form and to ensure that the provider has obtained the informed consent responsibly.

INFORMED CONSENT GUIDELINES

Clients must consent to all care they receive in a health care facility.

- For most aspects of nursing care, implied consent is adequate. Clients provide implied consent when they adhere to the instructions the nurse provides. For example, the nurse is preparing to perform a tuberculosis skin test, and the client holds out his arm for the nurse.
- For an invasive procedure or surgery, the client must provide written consent.
- State laws prescribe who is able to give informed consent. Laws vary regarding age limitations and emergencies. Nurses are responsible for knowing the laws in the state(s) in which they practice.
- A competent adult must sign the form for informed consent. The person who signs the form must be capable of understanding the information from the health care professional who will perform the service, such as a surgical procedure, and the person must be able to communicate with the health care professional. When the person giving the informed consent is unable to communicate due to a language barrier or a hearing impairment, a trained medical interpreter must intervene. Many health care facilities contract with professional interpreters who have additional skills in medical terminology to assist with providing information.

- Individuals who may grant consent for another person include the following.
 - Parent of a minor
 - Legal guardian
 - Court-specified representative
 - An individual who has durable power of attorney authority for health care
- Emancipated minors (minors who are independent from their parents, such as a married minor) may consent for themselves.
- Include a mature adolescent in the informed consent process by allowing them to sign an assent as a part of the informed consent document. (4.3)
- The nurse must verify that consent is informed and witness the client signing the consent form.

REFUSAL OF TREATMENT

- The PSDA stipulates that staff must inform clients they admit to a health care facility of their right to accept or refuse care. Competent adults have the right to refuse treatment, including the right to leave a facility without a discharge prescription from the provider.
- If the client refuses a treatment or procedure, the client signs a document indicating that he understands the risk involved with refusing the treatment or procedure and that he has chosen to refuse it.
- When a client decides to leave the facility against medical advice (without a discharge prescription), the nurse notifies the provider and discusses with the client the risks to expect when leaving the facility prior to discharge.
- The nurse asks the client to sign an Against Medical Advice form and documents the incident.

4.3 Responsibilities for informed consent

Provider

Obtains informed consent. To do so, the provider must give the client

- The purpose of the procedure.
- A complete description of the procedure.
- A description of the professionals who will perform and participate in the procedure.
- A description of the potential harm, pain, or discomfort that might occur.
- Options for other treatments.
- The option to refuse treatment and the consequences of doing so.

Client

Gives informed consent. To give informed consent, the client must

- Give it voluntarily (no coercion involved).
- Be competent and of legal age or be an emancipated minor. When the client is unable to provide consent, another authorized person must give consent.
- Receive enough information to make a decision based on an understanding of what to expect.

Nurse

Witnesses informed consent. This means the nurse must

- Ensure that the provider gave the client the necessary information.
- Ensure that the client understood the information and is competent to give informed consent.
- Have the client sign the informed consent document.
- Notify the provider if the client has more questions or appears not to understand any of the information. The provider is then responsible for giving clarification.
- Document questions the client has, notification of the provider, reinforcement of teaching, and use of an interpreter.

STANDARDS OF CARE (PRACTICE)

- Nurses base practice on established standards of care or legal guidelines for care, such as the following.
 - The nurse practice act of each state.
 - Published standards of nursing practice from professional organizations and specialty groups, including the American Nurses Association (ANA), the American Association of Critical Care Nurses (AACN), and the American Association of Occupational Health Nurses (AAOHN).
 - Health care facilities' policies and procedures, which establish the standard of practice for employees of that facility. They provide detailed information about how the nurse should respond to or provide care in specific situations and while performing client care procedures.
- Standards of care define and direct the level of care nurses should give, and they implicate nurses who did not follow these standards in malpractice lawsuits.
- Nurses should refuse to practice beyond the legal scope of practice or outside of their areas of competence regardless of reason (staffing shortage, lack of appropriate personnel).
- Nurses should use the formal chain of command to verbalize concerns related to assignment in light of current legal scope of practice, job description, and area of competence.

IMPAIRED COWORKERS

Impaired health care providers pose a significant risk to client safety. **Q3**

- A nurse who suspects a coworker of any behavior that jeopardizes client care or could indicate a substance use disorder has a duty to report the coworker to the appropriate manager.
- Many facilities' policies provide access to assistance programs that facilitate entry into a treatment program.
- Each state has laws and regulations that govern the disposition of nurses who have substance use disorders. Criminal charges could apply.

ADVANCE DIRECTIVES

The purpose of advance directives is to communicate a client's wishes regarding end-of-life care should the client become unable to do so.

- The PSDA requires asking all clients on admission to a health care facility whether they have advance directives.
- Staff should give clients who do have advance directives written information that outlines their rights related to health care decisions and how to formulate advance directives.
- A health care representative should be available to help with this process.

Types of advance directives

Living will

- A living will is a legal document that expresses the client's wishes regarding medical treatment in the event the client becomes incapacitated and is facing end-of-life issues.
- Most state laws include provisions that protect health care providers who follow a living will from liability.

Durable power of attorney for health care

A durable power of attorney for health care is a document in which clients designate a health care proxy to make health care decisions for them if they are unable to do so. The proxy may be any competent adult the client chooses.

Provider's orders

Unless a provider writes a "do not resuscitate" (DNR) or "allow natural death" (AND) prescription in the client's medical record, the nurse initiates cardiopulmonary resuscitation (CPR) when the client has no pulse or respirations. The provider consults the client and the family prior to administering a DNR or AND.

NURSING ROLE IN ADVANCE DIRECTIVES

Nursing responsibilities include the following.

- Provide written information about advance directives.
- Document the client's advance directives status.
- Ensure that the advance directives reflect the client's current decisions.
- Inform all members of the health care team of the client's advance directives. **Q3F**

MANDATORY REPORTING

Health care providers have a legal obligation to report their findings in accordance with state law in the following situations.

ABUSE

Nurses must report any suspicion of abuse (child or elder abuse, domestic violence) following facility policy.

COMMUNICABLE DISEASES

Nurses must report communicable disease diagnoses to the local or state health department. For a complete list of reportable diseases and a description of the reporting system, go to the Centers for Disease Control and Prevention's website, www.cdc.gov. Each state mandates which diseases to report in that state.

- Reporting allows officials to:
 - Ensure appropriate medical treatment of diseases (tuberculosis).
 - Monitor for common-source outbreaks (foodborne, hepatitis A).
 - Plan and evaluate control and prevention plans (immunizations).
 - Identify outbreaks and epidemics.
 - Determine public health priorities based on trends.

Application Exercises

1. A nurse observes an assistive personnel (AP) reprimanding a client for not using the urinal properly. The AP tells him she will put a diaper on him if he does not use the urinal more carefully next time. Which of the following torts is the AP committing?
 - A. Assault
 - B. Battery
 - C. False imprisonment
 - D. Invasion of privacy
2. A nurse is caring for a competent adult client who tells the nurse that he is thinking about leaving the hospital against medical advice. The nurse believes that this is not in the client's best interest, so she prepares to administer a PRN sedative medication the client has not requested along with his usual medication. Which of the following types of tort is the nurse about to commit?
 - A. Assault
 - B. False imprisonment
 - C. Negligence
 - D. Breach of confidentiality
3. A nurse in a surgeon's office is providing preoperative teaching for a client who is scheduled for surgery the following week. The client tells the nurse that he will prepare his advance directives before he goes to the hospital. Which of the following statements made by the client should indicate to the nurse an understanding of advance directives?
 - A. "I'd rather have my brother make decisions for me, but I know it has to be my wife."
 - B. "I know they won't go ahead with the surgery unless I prepare these forms."
 - C. "I plan to write that I don't want them to keep me on a breathing machine."
 - D. "I will get my regular doctor to approve my plan before I hand it in at the hospital."
4. A nurse is caring for a client who is about to undergo an elective surgical procedure. The nurse should take which of the following actions regarding informed consent? (Select all that apply.)
 - A. Make sure the surgeon obtained the client's consent.
 - B. Witness the client's signature on the consent form.
 - C. Explain the risks and benefits of the procedure.
 - D. Describe the consequences of choosing not to have the surgery.
 - E. Tell the client about alternatives to having the surgery.
5. A nurse has noticed several occasions in the past week when another nurse on the unit seemed drowsy and unable to focus on the issue at hand. Today, she found the nurse asleep in a chair in the break room when she was not on a break. Which of the following actions should the nurse take?
 - A. Alert the American Nurses Association.
 - B. Fill out an incident report.
 - C. Report the observations to the nurse manager on the unit.
 - D. Leave the nurse alone to sleep.

PRACTICE Active Learning Scenario

UNDERLYING PRINCIPLES: List the five elements necessary to prove negligence.

NURSING INTERVENTIONS: List at least four ways nurses can avoid liability for negligence.

