

Chapter 12

Nursing and the Law: What Are the Rules?

Chapter 12

Lesson 12.1

Learning Objectives

- 1) Discuss the content of your state's Nurse Practice Act.
- 2) Describe the responsibilities of your state's board of nursing (or nursing regulatory board).
- 3) Explain the limits of nursing licensure within your state.
- 4) Define the nursing standard of care.
- 5) Differentiate between common law and statutory law.

Nurse Practice Act (p. 130)

- Defines nursing practice and establishes standards for nurses in your state
- Ignorance of your state's Nurse Practice Act is never a valid defense against any legal proceeding regarding your license

Content of Nurse Practice Acts (p. 130)

- The Nurse Practice Act of each state commonly includes the following content:
 - Definition of nursing
 - Definition of LPN/LVN
 - Use of the title of LPN or LVN
 - Scope of practice
 - Elements of unprofessional conduct
 - Functions of the state's board of nursing

Basic Terminology (p. 130)

- Basic Nursing Care
 - Nursing care that can be performed safely by the LPN/LVN
- Basic Patient Situation
 - Patient's clinical condition is predictable
 - Medical and nursing orders are not changing continuously
- Complex Nursing Situation
 - Patient's clinical condition is not predictable
 - Medical or nursing orders are likely to involve continuous changes or complex modifications

Basic Terminology (cont'd) (p. 130)

- Delegated Medical Act
 - A physician's order is given to a registered nurse (RN), an LPN, or an LVN by a physician, dentist, or podiatrist
- Delegated Nursing Act
 - An RN gives nursing orders to an RN, LPN, or LVN
- Direct Supervision
 - The supervisor is continuously present to coordinate, direct, or inspect nursing care
- General Supervision
 - A supervisor regularly coordinates, directs, or inspects nursing care and is within reach either in the building or by telephone

State Board of Nursing (p. 130-131)

- Functions of the state board of nursing (or nurse regulatory board)
- Disciplinary responsibility and action
- Disciplinary process and action

State Board of Nursing (or Nurse Regulatory Board) (p. 131)

- All states and provinces have examining councils that provide nursing examinations for licensure and review complaints that can lead to revocation of a license.
- Each state's Nurse Practice Act lists specific reasons for which they seek to discipline a nurse.

Functions of the Board (p. 131)

- Committees or councils that decide whether specific activities are within the scope of LPN/LVN practice in their state
- Some state nursing boards have developed a website and may offer a variety of services
 - License renewal, application for licensure by examination, verification of licensure status of a state nurse, change of address/phone number/e-mail address, download forms, links to continuing education courses, the state's Nurse Practice Act

Disciplinary Responsibility of the Board (p. 131)

- Categories of Disciplinary Actions
 - Fraud and deceit
 - Criminal activity
 - Negligence
 - Risk to patients because of physical or mental incapacity
 - Violation of the nurse practice act or rules
 - Disciplinary action by another board
 - Incompetence
 - Unethical conduct
 - Drug and/or alcohol use

Disciplinary Process and Action (p. 132)

- Sworn complaint—filed against the LPN/LVN
- Review of complaint
- Finding of not guilty
- Finding of guilty of misconduct
 - The board may issue a public or private reprimand

Nursing Licensure (p. 132)

- Nursing licensure protects the title of LPN or LVN
- National licensing examination (NCLEX-PN®)
 - A graduate is eligible to apply on completion of a state-approved practical/vocational nursing education program
 - On successful completion of the examination, the graduate receives a nursing license

Working in Other States (p. 132)

- Interstate endorsements
 - Makes it possible to work in another state without repeating the NCLEX-PN® examination, after you meet that state's criteria for licensure by endorsement
- Multi-state licensure
 - Allows a nurse to have one license in his or her state of residency and practice in other states, depending on each state's Nurse Practice Act and legislation

Verification of Licensure (p.132-133)

- Some boards of nursing are instituting online verification of nursing licensure
 - The board provides public information about nurses who have current licensure
 - The verification system enables potential employers to call and obtain a nurse's license number, registration expiration date, and whether any board action has taken place

Unlicensed Assistive Personnel (p. 133)

- Trained to perform a variety of nursing tasks
- Supervision of UAPs by the RN and the LPN/LVN charge nurse in long-term care to ensure safety of patient care is a major concern
- RNs and LPN/LVNs can lose their jobs and licenses if the care provided by UAPs does not meet the standards of safety and effectiveness

Nursing Standard of Care (p. 133)

- Your guideline for good nursing care
- The phrase “you are held to the nursing standard of care” has important legal implications
- Based on what an ordinary, prudent nurse with similar education and nursing experience would do in similar circumstances

Common Law and Statutory Law (p. 133)

- Common Law—called “judge-made” law because it originates in the courts
- Statutory Law—developed by the legislative branch of the state and the U.S. Congress

Question 1

Linda wants to work in a state other than where she is currently working. She has been advised that when she meets the state's requirements she will be able to work in that state. This is known as:

1. interstate endorsement.
2. multi-state licensure.
3. border recognition agreement.
4. reciprocity.

Chapter 12

Lesson 12.2

Learning Objectives

- 6) Explain the difference between criminal and civil action.
- 7) Discuss the difference between intentional and unintentional torts.
- 8) List the four elements needed for negligence.
- 9) Review the steps for bringing legal action.
- 10) Differentiate between practical/vocational nursing student (SPN/SVN) and instructor liability in preventing a lawsuit.

Criminal vs. Civil Action (p. 133)

- Criminal Action—involves people and society as a whole and relationships between individuals and government
- Civil Action—protects individual rights and results in payment of money to the injured person

Intentional and Unintentional Torts (p. 134)

- Intentional Tort—intended to cause harm to the patient (threat or actual physical harm)
- Unintentional Tort—an action that is not meant to cause harm to the patient, but does

Intentional Torts (p. 134)

- Tort Law
 - Based on the premise that in the course of relationships with each other there is a general duty to avoid injuring each other
 - A wrong or injury done to someone that violates his or her rights
- Intentional Torts
 - Require a specific state of mind; that is, that the nurse intended to do the wrongful act

Assault and Battery (p. 134)

- Assault
 - An unjustified attempt or threat to touch someone
- Battery
 - Means to cause physical harm to someone
- Patients retain the right to refuse any treatment verbally and may leave the institution when they choose, unless they are there for court-ordered treatment
- Treating a patient without consent is battery even if the treatment is medically beneficial

Assault and Battery (cont'd) (p. 134)

- False Imprisonment and Use of Restraints
 - Keeping someone detained against his or her will
- Defamation
 - Damage to someone's reputation through false communication or communication without their permission
 - Libel is defamation through written communication or pictures
 - Slander is defamation by verbalizing untrue or private information (gossip) to a third party

Assault and Battery (cont'd) (p. 134)

- Physical and Emotional Abuse
 - You have a legal responsibility to report your suspicions or observations of abuse by following your facility's abuse policy
 - It is important to be empathetic (as opposed to sympathetic) so that your observations or reporting will be as objective as possible
 - Offer concrete, specific observations
 - Quote statements made and avoid offering a personal interpretation
 - Let the facts speak for themselves

Unintentional Torts (p. 135)

- The nurse did not intend to injure the patient.
- Did not maintain the nursing standard of care and did not do what a prudent nurse with comparable education and skills would do in a similar situation
- Negligence and malpractice (professional negligence) are examples of unintentional torts

Negligence (p. 135)

- Conduct which falls below the standards established by the law for the protection of others against the unreasonable risk of harm
- A common type of negligence is personal injury
- It is your conduct, not your intent, which is the issue

Malpractice (Professional Negligence) (p. 138)

- Negligence by a Professional
- Common Sources of Malpractice
 - Medication and treatment errors
 - Lack of observation and timely reporting on the patient
 - Defective technologies or equipment
 - Infections caused or worsened by poor nursing care
 - Poor communication of important information, including change of condition
 - Failure to intervene to protect the patient from poor medical care

Malpractice Insurance for Nurses (p. 136)

- Each nurse must carefully consider whether it is necessary to purchase a malpractice insurance policy
- Incidents of suing for malpractice continue, although your chances of being sued as an LPN/LVN are statistically small
- Look carefully at the policy of the agency of which you are an employee

The Four Elements Needed to Prove Negligence (p. 136)

- Duty—the nurse’s responsibility to provide care in an acceptable way
- Breach of Duty—the fact that the nurse did not adhere to the nursing standard of care
- Damages—The patient must prove that the nurse’s negligent act caused injury or harm
- Proximate Cause—A reasonable cause-and-effect relationship must be shown between the omission or commission of the nursing act and the harm to the patient

Legal Action Process (p. 137)

- Steps for Bringing Legal Action by a Patient
- Depositions
- Giving Testimony

Steps for Bringing Legal Action (p. 137)

- The patient believes that the nurse has violated his or her legal rights
- The patient seeks the advice of an attorney
- The attorney has a nurse expert review the patient's chart to see whether the nurse has violated the nursing standard of care
- The patient (the plaintiff) files a complaint that documents the grievance
- The complaint is served to the defendant (the nurse)

Steps for Bringing Legal Action (cont'd)

(p. 137)

- The defendant responds in writing
- Statements are taken from the defendant nurse, witnesses, nurse expert, patient (plaintiff), and other caregivers
- During the trial, important information is presented to the judge or jury
- A verdict (decision) is reached
- An appeal (request for another trial) can be made

Depositions (p.137)

- In preparation for a deposition, your attorney will
 - Provide a checklist of basic instructions for the deposition
 - Practice likely questions that may be asked and critique your responses
 - Prepare you for types of questions that may slant your testimony
 - Suggest appropriate ways to respond, but not tell you what to answer
 - Use a practice deposition video
 - Meet with you in advance, the day of the deposition, to answer any last-minute questions

How Your Attorney Will Assist (p. 137)

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Giving Testimony (p.137)

- Tell the truth
- Questions must be answered verbally
- Listen carefully to the question
- Before answering, pause
- Be specific in answering a question
- If your attorney instructs you to not answer a question, do not answer
- Be careful not to reveal the content of any conversation with your attorney

Giving Testimony (cont'd) (p.137)

- Ask for a break, especially if you are tired or not thinking clearly
- You will not be permitted to take any notes during the deposition, nor will you be able to bring in notes, files, a calendar, note pad, or pen
- A few weeks after the deposition your attorney and you may be able to review the testimony and make corrections

Charting (Legal Documentation) (p. 137)

- Traditional Methods of Charting
 - Source-oriented documentation
 - Problem-oriented documentation
- Current Methods of Charting
 - Focus charting
 - Charting by exception
 - PIE documentation
 - Narrative charting

Liability (p. 137-138)

- Personal Liability
 - Holds us responsible for our own behavior, including negligent behavior
- Vicarious Liability
 - Responsibility for actions of another because of a special relationship with the other
 - Borrowed servant doctrine
 - Captain of the ship doctrine
- Institutional Liability
 - Assumes that the health facility provides certain safeguards to keep the patient from harm

Responsibility and Accountability in Nursing (p. 138)

- Nursing demands that you be responsible
 - Means being reliable and trustworthy
- Accountability means that you are answerable
 - You are held accountable for all the nursing actions that you perform or are assigned to perform
 - Measures of accountability
 - Nurse Practice Act of the state
 - NAPNES standards of practice
 - NFLPN nursing standards
 - NFLPN code for practical/vocational nursing

Liability of Student Nurses and Instructors (p. 138)

- Student Nurses
 - Held accountable for the nursing care they give
 - Held to the standards of a licensed practical/vocational nurse
 - Emphasizes the necessity to prepare for providing care for assigned patients in the clinical area
- Instructor
 - Responsible to make patient assignments based on the student's knowledge base and ability to give safe nursing care
 - Also expected to provide reasonable supervision for the care given by a student

Functioning Beyond the Scope of Practice and Experience of an LPN/LVN (p. 139)

- As an LPN/LVN, you might be asked by an RN or physician to perform nursing duties beyond your scope of practice or experience
 - It is up to you to speak up
- Seeking Employment
 - Check out the philosophy, mission statement, and policies of your potential place of employment
 - Ask what is included in your job, the period of orientation you will receive, what the orientation will cover, and who will do the orientation

Question 2

Johanna's patient adamantly refuses his medication. She continues to attempt to force her patient to take the medication against his will. What type of crime could Johanna be committing?

1. False imprisonment
2. Defamation
3. Physical abuse
4. Assault and battery

Chapter 12

Lesson 12.3

Learning Objectives

- 11) Summarize the AHA's The Patient Care Partnership: Understanding Expectations, Rights and Responsibilities.
- 12) Describe the major focus of the Health Insurance Portability and Accountability Act (HIPAA).
- 13) Explain the purpose of The Joint Commission (TJC) Patient Safety Goals.
- 14) Discuss the differences among general consent, informed consent, and authorized consent.

Learning Objectives (cont'd)

- 15) Differentiate between the living will and durable power of attorney.
- 16) Explain the difference between physician-assisted suicide and euthanasia.
- 17) Explain how you would legally deal with two difficult situations that might occur in a clinical setting.

Privacy and Confidentiality (p. 139)

- Privacy in Health Care
 - The right to be left alone and free from intrusion, including the right to choose care based on personal beliefs, feelings, or attitudes
 - The right to govern bodily integrity
 - The right to control when and how sensitive information is shared
- Confidentiality
 - The nondisclosure of information regarding patients

Information That Must Be Revealed (p. 139)

- Communicable disease
- Vaccine-related adverse reactions
- Criminal acts
- Equipment-related injuries
- When there is a clear and present danger
- Abuse and neglect of a patient or elderly person
- Incompetence or unprofessional acts

Patient's Rights (p. 139-140)

- The American Hospital Association (AHA) developed “The Patient’s Bill of Rights” in 1972.
- Revised and renamed the “The Patient Care Partnership: Understanding Expectations, Rights, and Responsibilities” in 2003
- Ethical, not legal, document for hospitals recommending ways to guarantee patient rights
- Intended as a model for states to develop rights statements

Health Insurance Portability and Accountability Act (HIPAA) (p. 140)

- Original intent was portability of insurance for employees from one job to the next
- Main focus of the law is privacy
- Gives the patient rights over their health information

Basics of HIPAA (p. 140)

- Protection of Privacy
 - Provides a guide for health-related facilities and individuals to establish privacy standards
- Administrative Simplification
 - Goal is to reduce paperwork related to health care reimbursement
- Security Standards
 - Goal is establishing security standards for protection of electronic (computer and fax) transmission of protected health information

The Notice of Privacy Practices (p. 141)

- Notice is made available to all patients, employees, and health-related companies with whom the facility does business
- Patient receives a personal copy to read and sign
- Signing the copy denotes understanding of and agreement with the use and disclosure of PHI for treatment, payment, and facility operation

What the Notice of Privacy Practices Addresses (p. 141-142)

- Access to medical records
- Amendments to the medical record
- Restrictions on the use of PHI
- Access to an accounting
- Confidential communications
- Complaints about violations of privacy
- Minimum necessary rule
- Telephone requests for PHI
- Email and faxes

Additional Concerns Not Addressed by HIPAA (p. 142)

- PHI not meant for the chart
 - Daily patient assignments
 - Nurse's personal notes about the patient
 - Anything else with patient-identifying information that ends up crumpled and thrown in the wastebasket at the end of the shift
- Hallway conversation

The Joint Commission (TJC) National Patient Safety Goals (p. 142)

- TJC National Patient Safety Goals have been revised yearly since their inception
- Some original goals have been retired, usually because the requirements were integrated into the standards
- The number of the old goal is dropped and the numbering for new goals is continued

Patient Competency (p. 142)

- Legal Competency
 - 18 years old or older
 - A pregnant or married woman
 - A self-supporting minor
 - Competent in the eyes of the law

Patient Competency (cont'd) (p. 142)

- *Clinical competency* refers to a patient who is able to do the following
 - Identify the problem for which he or she is seeing the physician
 - Understand the options for care and the possible consequences
 - Make a decision
 - Provide sound reasons for the option he or she chooses

Patient's Right to Consent (p. 142)

- General (Implied) Consent
 - The fact that a person has voluntarily sought admission to a health care agency and willingly signs a general admission form
- Informed Consent
 - Must be obtained for invasive procedures ordered for therapeutic or diagnostic purposes
 - The patient must indicate comprehension (understanding) of the information provided
- Authorized Consent
 - Parents cannot give informed consent for the treatment of their children, but they can authorize treatment for their children up to a certain age

End-of-Life Issues (p. 143)

- Patient Self-Determination Act—amendment to the Omnibus Budget Reconciliation Act
 - Requires Medicare and Medicaid providers to give patients information about their rights
 - The right to participate in and direct their own health care decisions
 - The right to accept or refuse medical or surgical treatment
 - The right to prepare an advance directive
 - Information on the provider's policies that govern the utilization of these rights

End-of-Life Issues (cont'd) (p. 143)

- Living Will
 - A legal document that describes the kind of medical treatments or life-sustaining treatments the person would want if seriously or terminally ill
 - Does not let the person select someone to make decisions for them
- Durable Medical Power of Attorney
 - Names a health care proxy (anyone at least 18 years old) to make medical decisions, if that person is no longer able to speak for him- or herself
 - Becomes active anytime the person is unconscious or unable to make a medical decision

End-of-Life Issues (cont'd) (p.144)

- Do-Not-Resuscitate Order (DNR)
 - An advance directive which provides legal permission for a physician to write a DNR order
 - The physician may also write a DNR order for a patient who no longer has decision-making ability but does not have personal advance directives written and signed
- Removal of Life Support Systems
 - The physician must pronounce the patient dead and document this status before the nurse turns off the ventilator
 - If the nurse removes a life support system before the physician pronounces the patient dead, it can be considered an act of murder

End-of-Life Issues (cont'd) (p. 144 -145)

- Physician-assisted Suicide
 - Refers to a physician providing the means for death, most often with a prescription
 - The patient, not the physician, will ultimately administer the lethal medication
- Euthanasia
 - Generally means that the physician would act directly, for instance by giving a lethal injection, to end a patient's life

End-of-Life Issues (cont'd) (p. 145)

- Organ Donations
 - Organ donations are voluntary
 - Body tissues that can be donated include skin, corneas, bone, heart valves, and blood
 - Organ donation has raised both ethical and legal questions in some instances

End-of-Life (EOL) Care (p. 146)

- Numerous organizations and projects working on end-of-life principles
- Adopted or support core principles for end-of-life care
- Accept the term *palliative care* to identify the wide range of clinical services available for patients whose disease is not responsive to curative treatment

Good Samaritan Acts (p. 146)

- Laws that stipulate that a person who renders emergency care in good faith at the scene of an accident is immune from civil liability for his or her action while providing the care

Practical Application of Ethics and Law in Difficult Situations (p. 137-149)

- Late entry
- Verbal orders
- Questionable order
- Giving advice
- Understaffed unit
- Documenting UAP care

Practical Application of Ethics and Law in Difficult Situations (cont'd) (p. 137-140)

- Documenting someone else's care
- Illegal alteration of a patient's record
- Personal criticism of a nurse in patient's record
- Illegible physician's order
- Telephone orders

Practical Application of Ethics and Law in Difficult Situations (cont'd) (p. 137-140)

- Signing a will
- Possible negligence
- Standing orders
- Discharge instructions
- Patient education
- Telephone logs

Question 3

Betty has a terminally ill aunt who lives in Oregon. She has gone to her physician making her wishes clear that she would like to end her life now. This is known as:

1. physician-assisted suicide.
2. euthanasia.
3. removal of life supports.
4. Oregon's Death with Dignity Act.

Question 4

Betty is on her way home from work and stops at the scene of an accident. She performs CPR but unfortunately the victim does not survive. Which of the following statements is true regarding this situation?

1. Betty could be held responsible if she did not perform CPR correctly.
2. Betty could be charged with assault and battery.
3. The victim's family could sue Betty.
4. Betty is immune from civil liability.

Question 5

Patti's neighbor is in the hospital. While on duty, she looks in the hospital computer to find out what is wrong with her. When other neighbors ask about her condition, Patti replies she had hemorrhoid surgery and will be home in a few days. This is known as:

1. an unintentional tort.
2. negligence.
3. malpractice.
4. a violation of HIPAA.