

## Objectives

Upon completion of this chapter, the student should be able to:

1. State the differences among values, rights, and ethics.
2. Explain the purpose of the Patient Care Partnership.
3. List six steps for making ethical decisions.
4. Identify the legal importance of practice acts.
5. Describe the process of involuntary psychiatric commitment.
6. Name four areas of potential legal liability for mental health care providers.
7. Know the difference between the legal terms negligence and malpractice.
8. Discuss three legal responsibilities that relate to nursing and health care providers.

## Key Terms

- assault** (p. 26)  
**attitudes** (ĀT-ī-toodz) (p. 20)  
**autonomy** (aw-TŌN-ə-mē) (p. 23)  
**battery** (BĀ-tər-Ē) (p. 26)  
**belief** (bē-LĒF) (p. 20)  
**beneficence** (b-NE-fī-sən[t]s) (p. 23)  
**civil** (SĪ-vīl) **law** (p. 24)  
**codes of ethics** (Ē-thīks) (p. 23)  
**confidentiality** (KŌN-fī-DĒN-shē-ĀL-ī-tē) (p. 23)  
**contract** (KŌN-trākt) **law** (p. 24)  
**controlled substances** (KŌN-trōld SŪB-stān-səs) (p. 26)  
**criminal** (KRĪM-īn-əl) **law** (p. 24)  
**defamation** (dēf-ə-MĀ-shən) (p. 26)  
**duty** (DOO-tē) **to warn** (p. 28)  
**elopement** (ī-LŌP-mənt) (p. 28)  
**ethical dilemmas** (ĒTH-ī-kəl dī-LĒM-āz) (p. 23)  
**ethics** (ĒTH-īks) (p. 22)  
**false imprisonment** (fāls īm-PRĪZ-ən-mēnt) (p. 27)  
**felonies** (FĒL-ə-nēs) (p. 24)  
**fraud** (frāwd) (p. 26)  
**informed consent** (īn-FŌRMd cūn-SĒNT) (p. 27)  
**invasion of privacy** (īn-VĀ-zhən əv PRĪ-və-sē) (p. 27)  
**involuntary admission** (īn-VŌL-ūn-tār-ē əd-MĪ-shūn) (p. 26)  
**laws** (lāws) (p. 23)  
**libel** (LĪ-bəl) (p. 26)  
**malpractice** (māl-PRĀK-tīs) (p. 27)  
**misdemeanors** (MĪS-dī-MĒ-nrs) (p. 24)  
**morals** (MŌR-əls) (p. 20)  
**negligence** (NĒG-lī-jēns) (p. 27)  
**nonmaleficence** (nŏn-mə-LĒF-ə-sən[t]s) (p. 23)  
**parity** (PĀR-ī-tē) (p. 22)  
**The Patient Care Partnership: Understanding Expectations, Rights, and Responsibilities** (p. 22)  
**professional** (prŏ-FĒ-shūn-əl) **(nurse) practice acts** (p. 25)  
**reasonable and prudent** (PROO-dənt) **care provider** (p. 28)  
**right** (RĪT) (p. 21)  
**slander** (SLĀN-dər) (p. 26)  
**standards** (STĀN-dərd) **of practice** (p. 25)  
**tort law** (tōrt) (p. 25)  
**value** (VĀL-ū) (p. 20)  
**values clarification** (VĀL-ūs KLĀR-ī-fī-KĀ-shūn) (p. 21)

Health care professions are defined by certain beliefs, rights, and principles that serve as the basis for ethical and legal concepts. The framework for delivering appropriate therapeutic interventions is rooted in these concepts.

Attitudes, beliefs, values, and morals influence who we are. To be effective with mentally ill clients, we must first appreciate these concepts within ourselves and then understand them as they apply to our clients and their support persons.

## VALUES AND MORALS

**Attitudes** are ideas that help shape our points of view. The term can also describe one's outlook, such as "He

has a cheerful attitude." A **belief** is a conviction that is intellectually accepted as true whether or not it is based in fact. A **value** is something that is held dear, a feeling about the worth of an item, idea, or behavior. Values are formed in childhood. They shape our reactions, influence our behaviors, reflect the society in which we live, and are often used as a basis for making decisions. Values are individual, and they may change. **Morals** reflect one's attitudes, beliefs, and values. One's morals define right or wrong behavior. Once established, morals become deeply ingrained and are not easily changed.

## ACQUIRING VALUES

As children grow, they observe and take on the reactions of others in their environment. These adopted

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### Key Points

- The health care systems of many developed countries are undergoing financial challenges.
- Canada's health care system is administrated by each province under the guidance of the Department of National Health and Welfare and includes coverage for most medical, hospital, convalescent, and mental health services.
- Norway has a national insurance system that provides access to health care for everyone and covers all services, including mental health care.
- All British citizens are provided health care through a government-managed national health care system.
- Australians are provided a mix of health care plans that include a public health plan, a supplemental national private plan, and private insurance plans.
- Funds for health care in the United States are provided through federal (Medicare) and state (Medicaid) programs, private insurance coverage, and direct client payments.
- Mental health care is offered in inpatient and outpatient (community) care settings.
- The community support systems (CSS) model for mental health care is an organized network of people committed to assisting those with mental illness within the community setting.
- Community mental health care settings include psychiatric clinics, general hospitals, residential care programs, day treatment facilities, and psychiatric home care.
- Case management is a holistic system of interventions designed to support the integration of mentally ill clients into the community.
- Psychosocial rehabilitation is the use of multidisciplinary services to help clients learn the skills and supports needed to carry out the activities of daily living as actively and independently as possible.
- Psychosocial rehabilitation, consultation, resource linkage, advocacy, crisis intervention, and therapy are the basic components of the case management system.
- Intensive case management may use continuous care or assertive community treatment (ACT) teams who assume responsibility for the client in and out of the hospital.
- Community mental health services serve high-risk populations, such as children, people in crisis situations, homeless individuals, clients with HIV/AIDS, clients living in rural areas, and elderly people.
- Mental health services are commonly delivered by the multidisciplinary care team—a group of physicians, nurses, psychologists, therapists, and their assistants who each contribute to the client's plan of care and treatment.
- Social and economic issues must be considered when discussing mentally troubled persons.

**evolve** Go to your Evolve website (<http://evolve.elsevier.com/Morrison-Valfre/>) for additional online resources.

### Review Questions for the NCLEX® Examination

1. Because many individuals in the United States do not seek health care for mental illness until late into the illness, many end up being seen in:
  1. Hospitals and nursing homes
  2. Outpatient and community services
  3. Emergency rooms and jails
  4. Physicians' offices
2. What percentage of U.S. citizens have no health insurance?
  1. 5%
  2. 15%
  3. 25%
  4. 35%
3. The concept of recidivism is prevalent among individuals with chronic psychiatric problems. Which is the most accurate description of this concept?
  1. Relapse of symptoms of a client's mental health disease, resulting in frequent readmission to facilities
  2. Coordination and cooperation between community mental health agencies and hospitals, resulting in continuity of care
  3. Providing mental health care services to a client who lives on his own in his own home
  4. Limited supervision in a community setting with emphasis on individual responsibility for care
4. Which type of community setting involves care for individuals with mental health issues in a protected and supervised environment within the community?
  1. Psychiatric home care
  2. Community mental health centers
  3. Residential programs
  4. Partial hospitalization
5. The brother of a male mental health client is concerned because he works during the day and has no one to care for his brother, who requires almost constant supervision. He wants to keep his brother at home but is unsure of what resources are available in the community. What is the nurse's best response?
  1. "Have you considered a residential group home?"
  2. "Let me give you some information on a community day treatment center."
  3. "Psychiatric home care might be an option."
  4. "A community mental health center would be good for your brother."

### Additional Learning Resources

**SG** Go to your Study Guide at the back of this text for additional learning activities to help you master this chapter content.

reactions become our earliest attitudes. Preschool children learn the difference between right and wrong behaviors. They adopt the family's beliefs and traditions. As attitudes and beliefs develop, values begin to form.

Children are exposed to a variety of values at school. They develop work habits, learn to solve problems, interact with others, and make decisions. Parental values are still modeled because the family remains the major source of values until adulthood.

During the teen years, adolescents begin to identify their own significant values. By early adulthood, an individual value system is established. Adults may feel secure with their values or discard them for new ones. Older adults may feel threatened by the changing social values, but they tend to hold onto their own value systems.

Culture, society, personality, and experiences all shape our values. How values are shared largely depends on the sociocultural environment. Most societies use a combination of methods to transmit values (Potter and Perry, 2009). These methods are outlined in Table 3-1.

People who choose to work in the health care professions usually arrive with strong personal values. Human values important in caregivers include a concern for the welfare of others (**altruism**), respect for the uniqueness and worth of people (**human dignity**), **equality**, **justice**, **truth**, **freedom**, and **acceptance**. Caring is the foundation of health care, for if we do not care, we will be unable to effectively treat, teach, or work with clients.

### VALUES CLARIFICATION

Every society has a value system. Habits, customs, and traditions are important to traditional societies. Modern societies rapidly change, and people are often not aware of their values until they experience difficulties and their values are questioned. **Values clarification** is a step-by-step process to help identify significant values. The process helps care providers become aware of

how their own values affect interactions with clients. Values clarification involves three steps: choosing, prizing, and acting (Table 3-2).

To illustrate, let us assume that you are working at the local clinic. Today a large, scruffy man who has not bathed in weeks presents himself for care. There is a wild look in his eyes, and he is arguing with himself as he approaches you. What you really want to do is run, but you must cope with this client. How does the value of caring apply here?

First, you have freely **chosen** to care about people; otherwise you would have selected another line of work. Second, you **prize** the value of caring because your clients see you as compassionate and concerned. Third, you **act** on your values by accepting the unkempt, scruffy man as a person worthy of care. You ask him what you can do to help. He begins to cry and tells you that since the death of his wife and children in a house fire, no one has cared if he lives or dies. By acting on your value (caring), you have touched this person and paved the way for him to improve his situation.

You have chosen to care. You cherish the value of caring enough to act, even when that value is threatened. Be clear about **your values**. Be aware of your **client's values** because they are the guidelines for one's lifestyle, conduct, and relationships.

### RIGHTS

A **right** is described as a power, privilege, or existence to which one has a just claim. Rights have several roles in society; they can be used as expressions of power, to justify actions, and to settle disputes. Rights help define social interactions because they contain the principle of **justice**; they equally and fairly apply to all citizens. For example, we all have the right to be respected as human beings and treated with dignity. Rights also have obligations. You have the right to drive down the road, but inherent in this right is the obligation to obey traffic laws.

**Table 3-1** How Values are Transmitted

MODE OF TRANSMISSION	DEFINITION
Modeling	Copying an example—One person behaves in the ideal or preferred manner, while the other copies the behavior.
Moralizing	Sets standards for right and wrong—Choice is not allowed.
Laissez-faire	Unrestricted choices—No direction is given. One is free to explore and learn from experiences. This mode of transmission may result in confusion or frustration.
Reward/punishment	Rewards valued behaviors and punishes undesirable acts; authoritarian—Children learn that strength is right. This mode of transmission may send the message that violence is acceptable.
Responsible choice	A balance of freedom and restriction—One may choose among stated options. New behaviors and consequences are explored.

**Table 3-2** Values Clarification Process

STEP	PROCESS
Choosing	Consider all possible alternatives. Consider all possible consequences. Choose freely without pressure or coercion from others.
Prizing	Cherish or prize the choice. Share choice with others. Reaffirm importance of value.
Acting	Make value a part of behaviors (internalize value). Generalize value to all situations. Repeatedly act with consistent behavioral pattern.

## CLIENT RIGHTS

The 1972 **Patient's Bill of Rights** states that all clients have the rights to respectful care, privacy, confidentiality, continuity of care, and relevant information. It also addresses clients' rights to examine their bills, refuse treatment, and participate in research. A revised document, **The Patient Care Partnership: Understanding Expectations, Rights, and Responsibilities**, was adopted in 2003. Statements of rights now exist for the old, young, disabled, pregnant, dying, developmentally disabled, and mentally ill—the most vulnerable people in society.

People with mental illness tend to lose their rights in two ways. First, the problems with which they are coping require energy. Sometimes reality eludes them. Many are not able to recognize their rights, much less exercise them. Second, the mental health delivery system can impose limits on clients' abilities to exercise their rights. To protect their rights, the Mental Health Systems Act Bill of Rights was passed by the U.S. Congress in 1980. This bill served as a pattern from which state bills of rights for the mentally ill population were developed. For an example of a client's right to treatment, see Box 3-1.

Currently, 23 states have enacted mental health **parity** laws that require insurance companies to include coverage for mental illness that is equal to the coverage for physical illness. However, only nine states include treatment for substance abuse in their parity laws.

## CARE PROVIDER RIGHTS

The rights of nurses and other care providers relate to respect, safety, and competent assistance. Care providers have the right to **respect** as individuals. Nurses have the right to full and equal participation as members of the health care team. All health care providers have the right to set standards for quality and develop policies that affect client care.

**Box 3-1** Example of the Right to Treatment

In 1957, Mr. Donaldson was involuntarily committed, on his father's initiation, to a Florida state hospital for care, treatment, and maintenance. For 14 years before his commitment, he was gainfully employed. Despite the fact that Mr. Donaldson posed no danger to himself or others, his requests for ground privileges, occupational training, and an opportunity to discuss his case with the superintendent, Dr. O'Connor, or others were denied. During his 15 years of confinement, he was not provided with any treatment.

Mr. Donaldson frequently requested his release, which the superintendent was authorized to grant even though Mr. Donaldson was lawfully confined, because even if he continued to be mentally ill, he posed no danger to himself or others. Between 1964 and 1968, Mr. Donaldson's friend requested on four separate occasions that Mr. Donaldson be released into his custody. These requests, and requests made by a halfway house on Mr. Donaldson's behalf, were all denied by Dr. O'Connor, who believed that Mr. Donaldson should be released into his parents' custody. Dr. O'Connor further believed that Mr. Donaldson's parents were too old and infirm to care for him adequately.

In *O'Connor v. Donaldson* (1975), the court found that Mr. Donaldson's care was merely custodial because he received no treatment. He was not dangerous, community alternatives were available for him, and the physician's refusal to release him was "malicious." The Federal Court of Appeals ruled that Mr. Donaldson had a constitutional right to treatment and awarded him \$38,000 in damages.

From Varcarolis EM, Carson VB, Shoemaker NC: *Foundations of psychiatric mental health nursing: a clinical approach*, ed 5, Philadelphia, 2006, Saunders.

Every health care provider has the right to function within a safe environment. This applies to both the physical environment (i.e., properly maintained equipment) and the affective or emotional environment. Care providers who strive to minimize the physical and emotional stresses of the working environment are exercising their right to function safely.

The right to **competent assistance** includes the right to receive assistance from people who are capable of performing at the stated level. For example, the certified nurse assistant (CNA) who is assigned to work with a nurse is able to function adequately and safely as a nursing assistant. Health care providers need to exercise their rights. By doing this, we remind the system of the therapeutic values inherent in the caregiver-client relationship.

## ETHICS

**Ethics** is a set of rules or values that govern right behavior. Ethics reflect values, morals, and principles right and wrong. The purpose of ethical behavior is to protect the rights of people. Health care ethics focus on the moral aspects of health care availability, delivery,

and policy. They are also called **biomedical ethics**, **bioethics**, or **medical ethics**.

## ETHICAL PRINCIPLES

Ethical principles are the concepts that form the basis for professional codes of ethics (Edelman and Mandel, 2006). They are the behaviors that define what is good or right conduct. Ethical codes serve two purposes: (1) They act as guidelines for standards of practice and (2) they let the public know what behaviors can be expected from their health care providers.

The concepts of autonomy, beneficence, nonmaleficence, and justice are the main ethical principles on which codes of ethics are established. Remember these principles. They will serve you well as you encounter the many ethical situations inherent in health care.

**Autonomy** refers to the right of people to act for themselves and make personal choices, including refusal of treatment. Caregivers who practice the principle of autonomy encourage clients to participate in informed decision-making. The procedure known as informed consent promotes autonomy by providing relevant information and choice for the client.

**Beneficence** means to actively do good. Actions that promote client health are beneficent. Choosing the action that is the most therapeutic for the client is an example of beneficence.

The principle of **nonmaleficence** can be stated in three words: **Do no harm**. Perhaps it is the most important ethical principle of the caregiving professions. Although nurses must sometimes carry out procedures that result in pain, they are considered in light of the benefits gained. Therapeutic interventions are delivered only after client safety and comfort are considered. Nonmaleficence ensures that clients will not be harmed during care.

**Justice** implies that all clients are treated equally, fairly, and respectfully. Because health care resources are limited, the application of justice can be difficult. However, all clients deserve respect and a share of the available resources.

The concepts of confidentiality, fidelity, and veracity are other important ethical principles. The client's rights to privacy, truth, and duty are protected by these ethical principles. **Confidentiality** is the duty to respect private information. It is a legal and ethical duty of health care providers to keep all information about clients limited to only those directly involved with care. Sharing private information not only is unethical but also may be grounds for legal action.

**Fidelity** is the obligation to keep your word. Telling the client that you will return in 10 minutes is a promise. Keep that appointment because your client relies on you, and your credibility grows or diminishes depending on how well you keep your promises. Do what you say, or do not say it.

The final principle, **veracity**, is the duty to tell the truth. Be careful here. Answer clients' questions honestly, but remember to stay within your standards and limitations of practice. It is not within your realm, for example, to discuss the disease prognosis or lead a client toward a certain decision.

## CODES OF ETHICS

**Codes of ethics** for practical (vocational) and registered nurses have been developed by the International Council of Nurses, the American Nurses Association, the National Federation of Licensed Practical Nurses, and the Canadian Nurses Association (Box 3-2). Codes of ethics have been developed for other health care professions and may differ slightly, but all are based on the same ethical principles. Provide information to clients, be truthful, and support your clients, but consult your supervisor if there is any question of appropriateness. It is important to practice with ethical principles in mind.

## ETHICAL CONFLICT

In today's world of advanced technologies and complex situations, no clear-cut answers exist for complicated questions that arise. **Ethical dilemmas** (conflicts) exist when there is uncertainty or disagreement about the moral principles that endorse different courses of action.

In health care, ethical dilemmas arise when problems cannot easily be solved by decision-making, logic, or use of scientific data. Answers to ethical dilemmas usually have a broad impact. Because of this, many health care institutions have established **bioethics committees** to study, educate, and assist staff members in coping with ethical dilemmas.

Most of the time, no clear-cut solutions exist for ethical dilemmas. Although each ethical dilemma is unique, the method for making ethical decisions can be applied to all situations. Guidelines for dealing with such dilemmas are given in Box 3-3. "Making ethical decisions in an orderly, systematic manner increases one's ability to deal with the dynamic and sometimes complex issues relating to ethics. The quality of care depends on the skills and ethical integrity of the practitioner" (Morrison, 1993).

## LAWS AND THE LEGAL SYSTEM

Every health care provider must be familiar with the basic concepts of the legal system. **Laws** are the controls by which a society governs itself. They are derived from rules, regulations, and moral and ethical principles. Laws apply to every member of society.

## GENERAL CONCEPTS

Laws exist at every level of government. In the United States, federal law defines the organization of

**Box 3-2 ICN Code of Ethics for Nurses****1. NURSES AND PEOPLE**

The nurse's primary responsibility is to those requiring nursing care.

The nurse promotes an environment in which human rights, values, customs, and spiritual beliefs of the individual, family, and community are respected.

The nurse ensures that the client receives sufficient information on which to base consent for care and treatment.

The nurse holds in confidence personal information and uses judgment in sharing that information.

The nurse shares with society the responsibility for initiating and supporting actions to meet health and social needs *of the public*, in particular those of vulnerable populations.

The nurse shares the responsibility to sustain and protect the natural environment from depletion, pollution, degradation, and destruction.

**2. NURSES AND PRACTICE**

The nurse carries personal responsibility and accountability for nursing practice, and for maintaining competence by continual learning.

The nurse maintains a standard of personal health such that the ability to provide care is not compromised.

The nurse uses judgment regarding individual competence when accepting and delegating responsibility.

The nurse at all times maintains standards of personal conduct that reflect well on the profession and enhance public confidence.

The nurse, in providing care, ensures that the use of technology and scientific advances are compatible with the safety, dignity, and rights of people.

**3. NURSES AND THE PROFESSION**

The nurse assumes a major role in determining and implementing acceptable standards of clinical nursing practice, management, research, and education.

The nurse is active in developing a core of research-based professional knowledge.

The nurse, acting through professional organizations, participates in creating and maintaining safe, equitable social and economic working conditions in nursing.

**4. NURSES AND COWORKERS**

The nurse sustains a cooperative relationship with coworkers in nursing and other fields.

The nurse takes appropriate action to safeguard individuals, families, and communities when their health is endangered by a coworker or any other person.

Modified from the International Council of Nurses: *The ICN code of ethics for nurses*, Geneva, Switzerland, 2006, The Council.

**Box 3-3 Guidelines for Making Ethical Decisions**

1. Identify all elements of the situation. Gather data. Identify each person involved in the decision-making process.
2. Assume good will. All care providers want a satisfactory resolution to the problem. When working with emotionally charged issues, remember that there is no need for competition.
3. Gather relevant information. Thoroughly assess lifestyle, preferences, wishes, and support systems. Try to form an "ideal picture" of the resolution for the dilemma.
4. List and order values. Decide which ethical principles are most important in the situation. List them in order of importance, and then determine a plan or course of action.
5. Take action. Implement the plan. Monitor any changes.
6. Evaluate the effectiveness of the plan.

Modified from Potter PA, Perry AG: *Fundamentals of nursing: concepts, process, and practice*, ed 7, St Louis, 2009, Mosby.

the government. Federal law is based on the U.S. Constitution. Laws at the state level are derived from the state's constitution and apply to citizens living within its boundaries. Local and city laws evolve from state law.

Laws change as society changes, but they are all based on the principles of justice (fairness), change,

standards, and individual rights and responsibilities. Laws have several functions in our society. They define relationships, describe appropriate and objectionable behaviors, and explain what kind of force is applied to maintain rules. Laws help provide solutions for many social and legal problems, and they serve to protect the rights of people while defining the limits of acceptable behaviors.

There are two types of law: public law and private law. **Public law** focuses on the relationship between the government and its citizens. The division of public law that is of importance to caregivers is known as **criminal law**. Its main function is to protect the members of society. Serious crimes, known as **felonies**, are punishable by death or imprisonment. Less serious crimes are called **misdemeanors**, with punishments ranging from fines to prison terms of less than 1 year.

Private law is commonly called **civil law**. Its function is to deal with relationships between individuals. Two important types of civil law for caregivers are contract law and tort law.

**Contract law** deals with agreements between individuals or institutions. These agreements or contracts may be written or implied. For example, on employment, health care providers enter into contracts with the employing institution.

"A **tort** is a legal wrong that is committed against the person or the property of another individual" (Morrison, 1993).

**Tort law** relates to individuals' rights and includes the need to be compensated for a wrong. Tort law is especially important for caregivers because many potential legal problems exist in every health care setting. Figure 3-1 lists the areas of law that are most significant for care providers.

### LEGAL CONCEPTS IN HEALTH CARE

The health care professional and the system are governed by rules and standards. Nursing, for example, is regulated by state boards of nursing that define the practice of nursing and regulate the profession through licensing procedures and disciplinary actions. Each state's board of nursing identifies the limits and scope of practice through a series of regulations known as that state's **nurse practice act**. Nurses need to be familiar with their state's nurse practice act because it is the **legal framework for practice in that state**. Other health care providers are responsible for knowing their state governing regulations. Caregivers are legally responsible for their actions. They are expected to know what is contained within their **professional (nurse) practice acts**.

Institutional policies also help to define health care practices. **Policies** are statements that define a course of action. **What** is to be done is stated in policies. **How** a task or skill is to be performed is defined in the institution's **procedure manual**. **Job descriptions** define the job, its functions, its qualifications, and to whom the caregiver reports. Guidelines for sound health care delivery can be found in each state's practice act; professional standards; and the employing institution's policies, procedures, and job descriptions.

A **standard** is a measurement for comparison by which one evaluates an action. **Standards of practice** are developed by specific health care disciplines. Standards of nursing practice, for example, are a set of guidelines

that provide measurable criteria for nurses, clients, and others to evaluate the quality and effectiveness of the nursing care provided. Psychiatric mental health standards for nursing practice can be found at the front of the book.

### LAWS AND MENTAL HEALTH CARE

Historically, people with mental illnesses were afforded few legal rights. Only recently have mental health clients been able to exercise their claims to fair and adequate treatment in settings helpful to their care. Nurses and their colleagues need to be aware of clients' legal rights to freedom, privacy, and choice. Laws relating to mental health issues "attempt to balance the basic rights of the individual against society's interest in being protected from persons who, because of mental disorder, present a threat of harm" (Keltner, Schwecke, and Bostrom, 2011).

### CLIENT-CAREGIVER RELATIONSHIP

An awareness of the obligations in the client-caregiver relationship ensures safe, legal practice. From a legal point of view, the caregiver and client enter into an **implied contract** on acceptance of service. The caregiver provides services that are accepted by the client. This idea of contractual obligations is one legal aspect of the caregiver-client relationship. Two other important aspects are liability and standards of care.

The concept of **liability** states that care providers are legally responsible for their professional obligations and behaviors. It includes the obligation to remain competent, maintain a current knowledge base, practice at a level appropriate to one's education, and practice unimpaired by drugs, disability, or illness.

Clients still retain their legal rights when they enter the mental health care system. The 1980 Mental Health Systems Act states that mentally ill individuals have rights to obtain information and treatment within a supportive, humane environment. The Patient Self-Determination Act of 1991 gives clients the right to make decisions about their care (Loewy, 1998). Individuals who are admitted to psychiatric facilities retain the right to vote, to buy and sell property, and to possess a driver's license.

People with mental illness may be unaware of their legal rights or unable to exercise them. Clients' judgments may be limited as the result of their illness and/or medications. It is important to recognize and safeguard clients' legal rights because behind every mental disorder lives a real person.

### ADULT PSYCHIATRIC ADMISSIONS

The decision to seek psychiatric care, whether made by the client, family, or community, is difficult. When the client originates the request for mental health services, it is considered a **voluntary admission**. Because

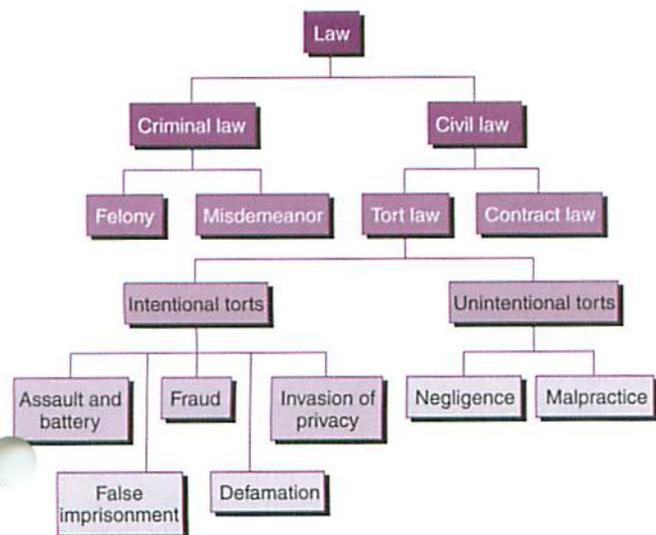


FIGURE 3-1 Laws important for health care providers.

they are often aware of their problems, most voluntarily admitted clients are active participants in their treatments and have a low potential for violence. Voluntarily admitted clients may legally discharge themselves at any time.

When individuals engage in behavior that is harmful to themselves or others, the involuntary admission process is undertaken. The 1953 Act Governing Hospitalization defines an **involuntary admission** as a process for institutionalization initiated by someone other than the client. Involuntary psychiatric admissions provide a protected, therapeutic environment, which is usually necessary for the client's safety. Clients may stay for days to years.

Physicians, police, and representatives of a county administrator may commit an individual for emergency treatment without a warrant, but a court order is usually required for long-term stays. Procedures for psychiatric commitment in the United States vary from state to state. Each state establishes standards for commitment, but most laws allow involuntary commitment only if the person is dangerous to self or others or cannot function in a reasonable manner. Most states have similar procedures for involuntary admissions.

The commitment process begins when a formal petition is filed. The client is then assessed by one or two physicians, and a determination is made to either release or hospitalize the person (Stuart, 2009). If the person is hospitalized, the length of stay may be on an emergency, temporary, or indefinite basis. Clients who are indefinitely hospitalized must be gravely disabled and unable to provide for themselves. Indefinite commitments are most often an action of the courts, which usually provide a guardian or conservator to protect the client's rights. They are subject to yearly review, and clients retain the right to consult a lawyer and petition the court for discharge. Figure 3-2 illustrates the process of involuntary commitment.

### AREAS OF POTENTIAL LIABILITY

Mental health care providers are placed in the unique position of balancing their clients' rights with the need to protect society. Many legal issues relate to the care of mentally ill individuals and an awareness of the potential liabilities helps safeguard caregivers' as well as clients' rights.

The most common crimes in health care settings are homicide, controlled substance violations, and theft. Legally, **homicide** is the killing of a human being, whereas **murder** is killing with intent. For example, a nurse who mistakenly gives a client the wrong drug that causes death may have committed homicide. However, a nurse who knowingly administers a lethal drug may be guilty of murder.

The Controlled Substances Act of 1970 was passed by Congress to regulate the supply and distribution of

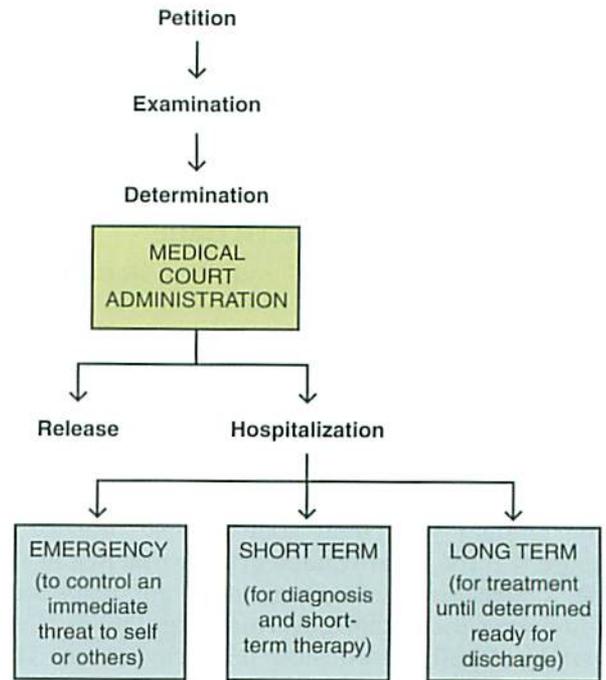


FIGURE 3-2 The involuntary commitment process.

certain powerful drugs. **Controlled substances** currently include narcotics, stimulants, depressants, hallucinogens, and some tranquilizers. As agents of the physician, nurses administer controlled drugs. They are responsible for adhering to their institution's policies and procedures regarding storage, distribution, and documentation of controlled substances.

**Robbery, theft, and larceny** all describe the taking of another person's personal property. Clients who lose valuable items can hold the agency liable for theft. Ensuring that a valuables disposition list is completed for every client is an important protection against theft.

**Fraud** is the giving of false information with the knowledge that action will be taken based on the information. For example, a technician documents that a treatment was given when it was not. The physician then bases a decision on the client's lack of response. The technician is guilty of fraud. Practicing with the utmost honesty is the best protection against fraud.

**Defamation** is defined as a false communication that results in harm. It is subdivided into two categories: written defamation, or **libel**, and verbal defamation, referred to as **slander**. Psychiatric care providers should base their communications on objective data and clinical observations, not judgments or opinions.

**Assault** is any act that threatens a client. No physical contact need occur, just a threatening action. Telling a client that he or she will be physically forced to do something if uncooperative is an example of assault.

**Battery** is when touching occurs without the client's permission. The best prevention against assault or

battery is clear communication. Make sure clients understand what you intend to do before you begin.

Another important area of potential liability relates to **invasion of privacy**. “The right to privacy includes privacy related to the body, confidential information and the right to be left alone” (Morrison, 1993). An invasion of privacy occurs when a client’s space, body, or belongings are violated. Although caregivers must be continually vigilant to protect a client’s privacy, those rights may occasionally be outweighed by the need to ensure safety. For example, a client who behaves suicidally may have personal belongings searched for potentially dangerous objects.

The client’s right to privacy also includes **confidentiality**, which is the sharing of information about the client only with those persons who are directly involved in care. Discussing any client with noninvolved people constitutes a breach of confidentiality.

### Critical Thinking

You overhear two psychiatric aides discussing Mrs. Samson while making the bed in Mr. Jones’ room.

- What are the ethical and legal principles being violated by the aides’ behaviors?
- How would you handle this situation?

All mental health care providers can protect the client’s privacy by treating each person with dignity and respect. Caregivers who work in inpatient settings need to orient clients to their environment and inform them of their privacy rights and how those rights may be restricted.

Detaining a competent person against his or her will constitutes **false imprisonment**. Any time a client’s freedom of movement is restrained the potential for liability exists (Box 3-4). Both physical force and verbal intimidation are included in the concept of false imprisonment. For example, threatening a client with confinement constitutes grounds for false imprisonment.

Involuntarily committed clients may make false imprisonment claims in some states, but usually the public’s right to safety takes precedence over a client’s claim of false imprisonment. Health care providers can confine mentally ill persons only to protect safety and prevent injury. Medical or legal authority must be obtained as soon as possible.

The application of **protective devices** and **restraints** may constitute false imprisonment. Restraints must be used only to protect the client, not for staff convenience.

#### Box 3-4 Criteria for False Imprisonment

1. The client is aware of the confinement.
2. Intent to confine exists.
3. Confinement takes place against the client’s will.

All less restrictive measures should first be attempted and documented. A written medical order for restraints must be on file in the client’s chart. Once restraints have been applied, the caregivers have an increased obligation to observe, assess, and monitor the client every 15 minutes. The restraints must be removed, one limb at a time, and the limb exercised every 2 hours. All observations and actions must be documented. Restraints are removed as soon as the client’s behavior is under control.

The concepts of both negligence and malpractice are rooted in the “reasonable and prudent person” theory. **Negligence** is defined as the omission (or commission) of an act that a reasonable and prudent person would (or would not) do. For example, a public swimming pool owner who did not repair a slide that then caused a child’s injury could be guilty of negligence. The concept of **malpractice** usually applies to professionals and is defined as a failure to exercise an accepted degree of professional skill that results in injury, loss, or damage. To be considered negligent, professional misconduct must meet four requirements:

1. The care provider owed a duty to the client.
2. The care provider did not carry out the duty (breach).
3. The client was injured as a result of the care provider’s action or inaction (proximate cause).
4. Actual loss or damage resulted from the actions.

To illustrate, a suicidal client is to be continuously observed (duty). The staff goes to lunch, leaving the client alone (breach of duty). During this time, the client commits suicide (proximate cause) and dies (damage). The staff is guilty of malpractice because no reasonable and prudent caregiver would leave a client unattended in a similar situation.

### CARE PROVIDERS’ RESPONSIBILITIES

The main responsibility of mental health care providers is to help clients cope with their problems. Dignified, humane treatment includes the protection of rights as human beings, citizens, and clients. Mental health clients have specific rights to treatment, refusal of treatment, informed consent, examination by the physician of their choice, confidentiality, and freedom from restraints.

**Informed consent** is an agreement between the client and caregivers that documents knowledge of and agreement to treatment. The client must be aware, informed, and capable of consenting. Mental health clients are presumed competent and able to consent to treatment. Obtaining consent for treatment is the physician’s responsibility, but nurses often assist in the process. Other legal issues that relate to psychiatric care include elopement and the duty to warn.

A special situation known as **elopement** sometimes arises during hospitalization when clients run away or elope from the institution. Caregivers who fail to prevent client elopement may be held liable if the client is injured as a result of the elopement. Keeping clients under supervision, plus accurate documentation of client behaviors and therapeutic actions, can prevent elopement.

All caregivers have the **duty to warn**. In situations where serious harm or death may occur, mental health professionals have a duty to protect potential victims from possible harm. For example, if your client states that he intends to kill his barber, you have a duty to warn the barber. Contact the client's physician and your supervisor, and be sure to document the situation.

In some states, nurses have a duty to report certain information. Examples of reportable data include suspected incidents of abuse, gunshot wounds, and certain communicable diseases. The rights of the client are sometimes balanced by the right of the public to be protected.

Documentation in client records is used in court to prove or disprove a claim. Each client record should be completed in ink, be dated and timed, and be legible

and complete. Data must be objective with client statements in quotation marks. Documentation should reflect the nursing process, standards of care, and client responses. Accurate, objective documentation is one of the best defenses against potential legal problems.

### THE REASONABLE AND PRUDENT CAREGIVER PRINCIPLE

The law judges professional actions by asking, "What would a **reasonable and prudent care provider** do under similar circumstances in a similar situation?" Then a comparison between behaviors is made. Engage in "reasonable and prudent" care by following standards of practice and the employing agency's policies, procedures, job descriptions, and contracts. Safe practice is based on your knowledge of the limits that define caregiving in your practice setting. Health care providers have the overall responsibility to practice in a competent, safe manner. This involves an active pursuit of new knowledge plus a willingness to conduct oneself according to ethical and legal standards. Areas of potential liability exist in many situations, and laws are not always clear when dealing with mental illness. To practice safely and effectively, be aware of your actions and develop an alertness to potential problems.

## Get Ready for the NCLEX® Examination!

### Key Points

- Societies share common values, morals, and rights that serve as foundations for making decisions.
- Values clarification is a three-step process to identify one's significant values.
- Rights are defined as powers or privileges to which one has a just claim.
- Clients' rights are addressed by the federal Mental Health Systems Act Bill of Rights and by each state in its state patient's bill of rights.
- Health care providers have the rights to practice their professions in safety and with respect and competent assistance.
- Ethics is a shared set of codes, rules, or laws that govern right behavior.
- Ethical principles for health care professionals have been organized into codes of ethics based on primary and secondary ethical principles.
- The six-step ethical decision-making process helps health care providers in resolving ethical dilemmas.
- Laws are the controls by which a society governs itself. They function to define relationships, describe acceptable behaviors, maintain rules, and protect the public.
- Legal concepts that govern health care providers are found in state practice acts; standards of practice; and institutional policies, procedures, and job descriptions.
- The involuntary psychiatric commitment process consists of petitioning, examination, and a determination to either release or hospitalize.
- Areas of potential legal liability for mental health care providers include crimes, fraud, libel, slander, assault and battery, invasion of privacy, false imprisonment, negligence, and malpractice.
- Malpractice is a failure to exercise an accepted degree of professional skill or learning that results in injury, loss, or damage.
- Health care practitioners have a legal responsibility to practice (1) in a safe, competent manner, (2) accurate and objective record keeping, and (3) within one's legal limitations. Nurses have the added responsibility to dispense controlled substances according to procedures.
- Care providers who work with mentally ill clients need to be aware of the potential liabilities inherent in client care situations.

### Additional Learning Resources

**SG** Go to your Study Guide at the back of this text for additional learning activities to help you master this chapter content.

**evolve** Go to your Evolve website (<http://evolve.elsevier.com/Morrison-Valfre/>) for additional online resources.