

Chapter 3

Legal and Ethical Aspects of Nursing

Chapter 3

Lesson 3.1

Learning Objectives

Theory

- 1) Explain the legal requirements for the practice of nursing and how they relate to a student nurse.
- 2) Identify the consequences of violating the nurse practice act.
- 3) Examine the issue of professional accountability, professional discipline, and continuing education for licensed nurses.
- 4) Compare and contrast the terms *negligence* and *malpractice*.

Learning Objectives

Clinical Practice

- 1) Reflect on how laws relating to discrimination, workplace safety, child abuse, and sexual harassment affect your nursing practice.
- 2) Discuss the National Patient Safety Goals and identify where these can be found.
- 3) Interpret rights that a patient has in a hospital, nursing home, community setting, or psychiatric facility.

Source of Law

- Laws are rules of conduct that are established by our government
- Three sources
 - The Constitution and Bill of Rights
 - Laws made by elected officials
 - Regulations made by agencies created by elected officials

Source of Law (cont'd)

- Constitutional law provides for basic rights and creates legislative bodies
- Judicial law results when a law or court decision is challenged and the judge affirms or reverses the decision
- Administrative law comes from agencies created by the legislature

Civil and Criminal Law

- Civil law
 - Guarantees individual rights
 - A tort is a violation of civil law
- Crime
 - A wrong against society
 - Imprisonment and/or fines may result if one is convicted of a crime

Nurse Practice Acts

- Define the scope of nursing practice
- Regulate the profession by a state's board of nursing
- Include the definition of nursing for the RN and the LPN or LVN and may include definitions for advanced-practice nurses

Licensure

- Eligibility determined by state's board of nursing
- Each state sends a representative to the National Council of the State Boards of Nursing, which develops the National Council Licensure Examination (NCLEX)[®]
- Passing score on NCLEX-PN[®] is accepted in all states as one requirement for licensure
- Reciprocity, nurse licensure compacts, or recognition of one state's nursing license by another state is a current issue

Student Nurses

- Held to the same standards as a licensed nurse
- Legally responsible for their own actions or inaction
- Have responsibility to consult with instructor when unsure in a situation, or when patient's condition is changing rapidly
- Need to know their state's nurse practice act

Professional Accountability

- Nurse's responsibility to meet health care needs of patient in a safe and caring way
- Students must apply classroom learning and theory in the clinical setting
- Accountability entails a commitment to stay current and knowledgeable

Delegation

- The assignment of duties to another person
- LPN may supervise nursing assistants, technicians, or other LPNs
- Delegating nurse's duty is to supervise and evaluate care that a licensed or unlicensed person provides

Professional Discipline

- State boards of nursing are responsible for discipline within the profession
- Most common charges brought against nurses include substance abuse, incompetence, and negligence
- It is considered negligence not to report another professional's misconduct

Continuing Education

- Many states have laws that require evidence of continuing education after a nurse has passed the licensing exam
- Nurses must continue their education to keep abreast of changes in health care practice, pharmacology, and technology in order to practice safely

Laws and Guidelines Affecting Nursing Practice

- Occupational Safety and Health Act
- Child Abuse Prevention and Treatment Act
- Discrimination
- Sexual harassment
- Good Samaritan laws
- Patients' Rights
- National Patient Safety Goals
- Health Insurance Portability and Accountability Act (HIPAA)
- Consents and releases

Occupational Safety and Health Administration (OSHA)

- Regulations on handling infectious/toxic materials, radiation safeguards, and electrical equipment
- Requires orientation and education in topics such as blood-borne pathogens, exposure, fire, bomb threats, lifting, and evacuation procedures
- Requires facilities to keep a record of hazardous substances as well as material safety data sheets (MSDS)

Child Abuse Prevention and Treatment Act (CAPTA)

- Defines *child abuse and neglect*
 - “Any recent act, or failure to act, that results in imminent risk of serious harm, death, serious physical or emotional harm, sexual abuse, or exploitation of a child by a parent or caretaker who is responsible for the child’s welfare”
- Licensed health care personnel required to report child abuse

Discrimination

- Making a decision or treating a person based on a class or group to which he belongs, such as race, religion, or sex, rather than on his individual qualities
- Illegal for employers to ask questions on an employment application that would indicate race or other protected categories, or health status

Sexual Harassment

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- Illegal when used as a condition of employment or promotion or when it interferes with job performance

Good Samaritan Laws

- Protect a health care professional from liability if he stops to provide aid in an emergency
- Liability is limited unless there is evidence of gross negligence or intentional misconduct

Patient's Rights

- Revised to “The Patient Care Partnership: Understanding Expectations, Rights, and Responsibilities” in 2003
- An ethical, not a legal, document
- Seeks to preserve patient's dignity, privacy, freedom of movement, and information needs
- State legislators have written laws that prohibit certain actions or guarantee particular rights

National Patient Safety Goals

- Provide evidence- and expert-based solutions to problem areas in terms of patient safety
- Sentinel event
 - An unexpected patient care event that results in death or serious injury (or risk thereof) to the patient
 - Most frequent cause is lack of communication among caregivers

Negligence and Malpractice

- Negligence
 - Failing to do something a reasonably prudent person would do, or doing something a reasonably prudent person would NOT do
- Malpractice
 - Negligence by a professional person
 - Not acting according to professional standards of care as a reasonably prudent professional would

Question 1

Universal guidelines are developed for all nursing interventions, which define appropriate measures that should be observed during the performance of those interventions. These are known as:

- 1) scope of practice.
- 2) advocacy.
- 3) standard of care.
- 4) prudent practice.

Chapter 3

Lesson 3.2

Learning Objectives

Theory

- 5) Discuss what you can do to protect yourself from lawsuits or the damage of lawsuits.
- 6) Differentiate a code of ethics from laws or regulations governing nursing, and compare the similarities of the codes of ethics from the NFLPN, NAPNES, and ANA.
- 7) Describe the NAPNES standards of practice.

Learning Objectives

- **Clinical Practice**

- 4) Describe three factors necessary for informed consent.
- 5) Explain advance directives and the advantage of having them written out.

The Chart or Medical Record

- A legal document that includes records of all assessments, tests, and care provided
- Kept confidential
- Only people directly associated with the care of that patient have legal access to information in the chart
- Property of the hospital, agency, or physician, not the patient

Health Insurance Portability and Accountability Act (HIPAA)

- Regulations regarding patient privacy and electronic medical records
- Failure to comply with the rules may lead to civil penalties
- Intentional violation of the regulations can lead to sizable fines and time in jail

Consent

- Legal document that records the patient's permission to perform a treatment or surgery, or to give information to insurance companies or other health care providers
- Informed consent
 - Indicates patient's participation in decision making
 - Person signing must know what the consent allows and be able to make a knowledgeable decision

Release

- Legal form to excuse one party from liability
- Common release is a Leave Against Medical Advice (Leave AMA)
- May also refer to forms used to authorize an agency to send confidential health care information to another agency, school, or insurance company

Witnessing Wills or Other Legal Documents

- Most hospitals and health care agencies have policies against witnessing wills or legal documents
- If will is contested, nurse could be called to testify regarding the patient's health or mental condition, or relationship to visitors

Advance Directives

- Allow a person to plan for/communicate medical wishes if unable to do so himself
- Durable power of attorney
 - Gives legal power to a health care agent
 - Person is chosen by the patient to follow the patient's advance directives and make medical decisions on his behalf

Common Legal Issues

- Nurses have access to private information and personal contact
- When legal boundaries are violated, and injury occurs, nurses may be subject to litigation

Assault and Battery

- Assault
 - The threat to harm another, or even to threaten to touch another without that person's permission
- Battery
 - Actual physical contact that has been refused or that is carried out against the person's will

Defamation

- One person makes remarks about another person that are untrue, and the remarks damage that other person's reputation
- Two types
 - Slander (oral)
 - Libel (written)

Invasion of Privacy

- A violation of the confidential and privileged nature of a professional relationship
- Unauthorized persons learn of the patient's history, condition, or treatment from the professional caregiver
- Leaves patients in a position that might cause loss of dignity or embarrassment

False Imprisonment

- Preventing a person from leaving, or restricting movements in the facility
- When involuntary admission is made against patient's wishes, to protect him from self-harm or from harming others, he may be detained without consent for a short time

Protective Devices

- The inappropriate use of devices that limit a person's mobility can result in charges of false imprisonment
- Devices may be mechanical or chemical
- Physician order needed for any protective device

Decreasing Legal Risk

- Nursing competence
- Incident or occurrence reports
- Liability insurance

Nursing Competence

- Possessing skill, knowledge, and experience necessary to provide adequate nursing care
- Documentation: key in proving nursing actions used were appropriate, protecting nurse from liability
- Lawsuits may be avoided by early identification of dissatisfied patients

Incident or Occurrence Reports

- Document occurrence that is out of the ordinary
- Document what happened, the facts about the incident, and who was involved or witnessed it
- Generally not filed as part of the patient's chart; no reference to the incident report is made in the patient's chart

Liability Insurance

- Protects the livelihood and assets of a nurse should the nurse get sued
- Pays for a lawyer to defend the nurse and any award won by plaintiff up to limits of the policy
- May also pay for attorney costs and related costs if the nurse is subjected to review by the state board of nursing

Ethics in Nursing

- Ethics are rules of conduct that have been agreed to by a particular group
- These rules are agreed to be morally right or proper for that group
- Ethics are different from laws, in that they are voluntary

Codes of Ethics

- A respect for human dignity, the individual, and provision of nursing care that is not affected by race, religion, lifestyle, or culture
- A commitment to continuing education, maintaining competence, and contributing to improved practice
- The confidential nature of the nurse-patient relationship, outlining behaviors that bring credit to the profession and protect the public

Ethical Dilemmas

- Life-prolonging treatment versus refusing such treatment
- Initiating or terminating life support or treatment
- Assisted suicide
- Euthanasia

Standards of Care

- Provide a way of judging the quality and effectiveness of patient care
- In legal cases, determine whether a nurse acted correctly

Question 2

Since a nurse's first duty is to the patient's health, safety, and well-being, it is necessary to report:

- 1) unethical behavior.
- 2) a worker who arrives late.
- 3) favoritism.
- 4) arguments among the staff.

Question 3

Malpractice is negligence by a professional person. In other words, the person does not act according to professional standards of care as a reasonably prudent professional would under the same or similar circumstances. In order to prove malpractice, four elements must be present. Which of the following is *not* an element of malpractice?

- 1) Defamation
- 2) Duty
- 3) Breach of duty
- 4) Causation

Question 4

When Mrs. Tingle, age 82, is admitted, the nurse notices bruises all over her body and suspects elder abuse. She may report her suspicions to everyone except the:

- 1) supervisor.
- 2) police.
- 3) family.
- 4) appropriate agency.