LEGAL ASPECTS OF NURSING

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LEARNING OBJECTIVES

After mastering the contents of this lecture, the student should be able to:

1. Define the terminologies.
2. Describe the general legal concepts of nursing.
3. Explain the regulation of nursing practice.
4. Describe the contractual arrangements in nursing.
5. Selected legal aspects of nursing practice.
6. List the areas of potential liability in nursing.
7. Explain the legal protection in nursing practice.
8. Reporting crimes, torts, and unsafe practices.
9. Explain the legal responsibilities of nursing students.

TERMINOLOGIES

Abuse, Assault, Battery, Contracts, Crimes, Defamation, Delegation, Document, Fraud, Law, Malpractice, Negligence, Torts, Violence, Float
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Introduction

As a nurse it has become an important necessity to be aware of the legal aspects associated with caring and helping people in the health industry today. Unfortunately, the more and more negligence cases there are the less and less people want to get into the health care field fearing legal aspects and the inevitable law suites. The first nursing law created was that of nursing registration in 1903.

The Tort Law is the legal aspects of the law that most nurses are more familiar with. This is the law that involved malpractice and negligence cases which many nurses take the time to learn inside and out as this is one of the biggest fears in the medical community. Basically a Tort is a wrongful act which produces harm, whether it is unintentional or intentional. Malpractice is a specific type of Tort where the standards of care are not met. This is one of the most common and familiar laws to nurses and something that nurses and doctors alike must be familiar with in order to continue their care efficiently.

Nurses must take as many precautions as they can during their daily shifts. Recording, documenting and reporting daily routines and decisions is one of the most common ways to make sure on track with patience and in the right. Nurses learn in school that proper care of a patient is not only making the right decisions but maintaining and organizing their medical records and reports efficiently.

The legal aspects of nursing are taught and expected to be kept up on throughout every nurse's career. A nursing job is something many young people aspire to but without the legal knowledge behind them, many hospitals will not hire them now that legal issues are becoming more and more problematic.
General legal concepts of nursing

Law can be defined as those rules made by humans who regulated social conduct in a formally prescribed and legally binding manner. Laws are based upon concerns for fairness and justice.

Functions of Law in Nursing
The law serves a number of functions in nursing:
1. It provides a framework for establishing which nursing actions in the care of client are legal.
2. It differentiates the nurse's responsibilities from those of other health professional.
3. It helps establish the boundaries of independent nursing action.
4. It assists in maintaining a standard of nursing practice by making nurses accountable under the law.

Types of law
Law governs the relationship of private individuals with government and with each other.

1. Public Law
One type of law is Public Law which deals with an individual’s relationship to the state.
Sources include Constitutional, Administrative and Criminal
These Sources occur on both the Federal and State level
1.1. Constitutional Law

Set of basic laws that defines and limits the powers of government.
Nurse maintains rights as an individual.
Constitutional Rights, Civil Rights, State Constitution.

1.2. Administrative Law

Developed by groups who are appointed to governmental administrative agencies. Food, Drug and Cosmetic Act; Social Security Act; Nurse Practice Act.

1.3. Criminal Law

Acts or offences against the welfare or safety of the public. Controlled Substance Act; Criminal Codes.

2. Civil Law

The second type of law is Civil Law which deals with crimes against a person or persons in such legal matters as:

- Contracts
- Torts
- Protective Reporting Law

2.1. Contract Law is the enforcement of agreements among private individuals

Elements of: Promise, Mutual Understanding, and Compensation

Employment Contracts is an example of contract law under civil law

2.2. Tort Law is the enforcement of duties & rights among independent of contractual agreements. It is a civil wrong committed on a person or property stemming from either a direct invasion of some legal
right of the person, infraction of some public duty, or the violation of some private obligation by which damages accrue to the person.

**Examples of Tort Law include:**

- Negligence and Malpractice
- Assault and Battery
- False Imprisonment
- Restraints or Seclusion
- Invasion of Privacy
- Defamation
- Fraud

**Negligence and Malpractice**

Liability is an obligation one has incurred or might incur thru any act or failure to act.

Malpractice refers to the behavior of a professional person’s wrongful conduct, improper discharge of professional duties, or failure to meet the standards of acceptable care which result in harm to another person.

Negligence (breach of duty) is the failure of an individual to provide care that a reasonable person would ordinarily use in a similar circumstance. Defendant is the person being sued. Plaintiff is the party who initiates the lawsuit that seeks damages.

**Proof of Liability depends on:**

1. Duty
2. Breach of duty
3. Injury
4. Causation
Legal Aspects of Nursing

Assault & Battery

Assault is the intentional & unlawful offer to touch a person in an offensive, insulting or physically intimidating manner. Battery is the touching of another person without the person’s consent.

Protective/Reporting Laws are sometimes considered criminal laws based on state classification

Examples include:
- Americans with Disabilities Act
- Good Samaritan Act

Regulation of nursing practice

Nursing practice falls under both public law and civil law. In all states, nurses are bound by rules and regulations stipulated by the nursing practice act as determined by the legislature.

Public laws are designed to protect the public. When these laws are broken, a nurse can be punished by paying a fine, losing her license, or being incarcerated. For example, a nurse guilty of diverting drugs, which is a crime against the state, could lose her license to practice and could be sent to jail.

Civil laws deal with problems occurring between a nurse and a client. For example, if a nurse catheterizing a client perforates the bladder the client has sustained injury. No law affecting the population as a whole has been broken, but the client may bring a civil suit against the nurse. The client may receive compensation for injuries, but the nurse receives no jail time.

The American Nurses Association (ANA) takes the position that definition of the scope of nursing practice flows out of nursing process, that is, the process of assessment, decision-making and
action that all nursing practice follows. In the document the Single Scope of Clinical Nursing Practice, the ANA states that the core or essence of nursing practice "is the nursing diagnosis and treatment of human responses to health and to illness. This core of the clinical practice of nursing is dynamic, and evolves as patterns of human responses amenable to nursing intervention are identified, nursing diagnoses are formulated and classified, nursing skills and patterns of intervention are made more explicit, and patient outcomes responsive to nursing intervention are evaluated"

**Contractual arrangements in nursing**

A contract is an agreement between two parties as to what will transpire and the rules and regulations governing the service that will be provided. The legal agreement is enforceable by law and those who sign the agreement must be able to legally enter into a contract. This means they must be of legal age and they must have the mental capacity to sign a contract. Although not all services are required to have a legal and binding contract, there are many that are governed by statutory law such as nursing services.

**Instructions to Write a Contract for Nursing Services:**

1. Type the date of the contract and the names of those entering into the nursing contract.
2. Type the agreements made by both parties as to what will transpire during the term of employment. This is the start date and the position and duties of the employee.
3. Type in any benefits that will be included in the compensation package. Insurance coverage, pension payments and any other incentive compensation plans will be covered here.

4. Expiration of the contract will be inserted next. The option of renewing the contract is included. The terms of different scenarios will be spelled out.

5. Insert the reasons the contract would be terminated and what payments would be received if the termination is enforced. The employee agrees to the confidentiality of the employer.

Selected legal aspects of nursing practice

Nurses need to know and apply legal aspects in their various roles. As client advocates, nurses should ensure the client’s right to informed consent; identify and report violent behaviour and neglect of vulnerable clients. Also nurses are required to report a nurse who is chemically impaired, and should be aware of issues related to delegation.

Informed Consent

Informed consent is an agreement by a client to accept a course of treatment or a procedure after being fully informed of it.

Consents are either express or implied. Express consent could be oral or written. If the procedure is more invasive and/or the potential for risk to the client is great, a written permission is needed.

Implied consent exists when the client’s nonverbal behaviour indicates agreement such as in positioning their bodies for an injection or when their vital signs are recorded.
Obtaining an informed consent for specific medical or surgical procedure is the responsibility of the person who performs the procedure.

**Information to be given to a Client to Make an Informed Decision**

1. Diagnosis or condition that requires treatment.
3. What the client can expect to feel or experience.
4. The intended benefits of the procedure.
5. Possible risks.
6. Advantages and disadvantages of alternatives to treatment (including no treatment)

**What are the Major Elements and Exceptions of Informed Consent?**

1. The consent must be voluntary
2. The consent must be given by a client who is capable and competent to understand. This means that certain population groups cannot provide consent such as children, whose appointed guardians must give consent before minors are treated. A second group is persons who are unconscious or severely injured. A third group is persons who are mentally ill.
3. The client must be given enough information to be the ultimate decision maker.

**The Nurse’s Role in Obtaining a Client’s Informed Consent**

1. The nurse is not responsible for explaining the medical or surgical procedure but for witnessing the client’s signature on the consent form.
   
   The nurse’s signature means:
   - The client gave voluntary consent after receiving enough information.
   - The client’s signature is authentic.
   - The client appears competent to give consent.
2. In the United States, nurses could be liable for interfering with the client-provider relationship.

Delegation

Delegation is “the transfer of responsibility for the performance of an activity from person to another while retaining accountability for the outcome”.

In the USA, the process of delegation is governed by laws and regulations such as the Nurse Practice Act (NPA), the Unlicensed Assistive Personnel (UAP) job description and skill level. The NPA defines and describes the scope of nursing practice.

When delegation is to occur, the nurse needs to determine the answers to the following questions:
- Does the NPA permit delegation
- Is there a list of procedure a nurse can delegate?
- Are there guidelines explaining the nurse’s responsibilities when delegating?

Violence, Abuse, and Neglect

Violent behaviour can include domestic violence, human abuse, and sexual abuse.

Neglect is the absence of care necessary to maintain the health and safety of a client nurses are in position to identify and assess cases of violence.

When an injury appears to be present resulting from abuse, neglect, or exploitation, the nurse must report the situation to the appropriate authority.
Areas of potential liability in nursing

Nurses need to know the differences between malpractice (unintentional tort) and intentional tort. Nurses must also recognize nursing situations in which negligent actions are most likely to occur and take measures to prevent them.

Many aspects relating to nursing practice and areas of nursing are subject to liability, including physician's orders, floating, inadequate staffing, critical care, and pediatric care.

**Physician's Orders**

The physician is in charge of directing the client's care, and nurses are to carry out the physician's orders for care, unless the nurse believes that the orders are in error or would be harmful to the client. In this case, the physician must be contacted to confirm and/or clarify the orders. If the nurse still believes the orders to be inappropriate, the nursing supervisor should be immediately contacted and why the orders are not being carried out put in writing. A nurse who carries out an erroneous or inappropriate order may be held liable for harm experienced by the client. Nurses are responsible for their actions regardless of who told them to perform those actions.

**Floating**

Nurses sometimes are asked to "float" to an unfamiliar nursing unit. The supervisor should be informed about a float nurse's lack of experience in caring for the type of clients on the new nursing unit.
The nurse should be given an orientation to the new unit and will be held to the same standards of care as are the nurses who regularly work on that unit.

**Inadequate Staffing**

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) has established guidelines for determining the number of staff needed for any given situation (staffing ratios). When there are not enough nurses to meet the staffing ratio and provide competent care, substandard care may result, placing clients at physical risk and the nurse and institution at legal risk. The nurse in this situation should provide nursing administration with a written account of the situation. A nurse who leaves an inadequately staffed unit could be charged with client abandonment.

**Critical Care**

Because the monitors used in critical care units are not infallible, constant observation and assessment of clients are required. This makes a 1:1 or a 1:2 nurse-client ratio imperative. Furthermore, equipment must be checked regularly and on a schedule by the biomedical department.

**Pediatric Care**

Legislation in each state requires that suspected child abuse or neglect be reported. Legal immunity is provided to the person who makes a report in good faith. When suspected child abuse or neglect is not reported by health care providers, legal action, civil or criminal, may be filed against them.
Legal protection in nursing practice

Nursing practitioners, according to Medismart: Nursing Educational Resources can protect themselves from most legal problems by following five basic guidelines: obtain an informed consent signature before treatment begins; document all actions regarding a patient's care; report any allegations of abuse toward a vulnerable population; protect the patient's right to privacy; and pay strict attention to avoid medication dosing errors.

Reporting crimes, torts, and unsafe practices

Nurses may report colleagues or other professionals if for practices that endanger the health and safety of clients. This may include alcoholism, drug use, theft and unsafe nursing practice.

Reporting a colleague is not easy, as the reporting person may feel disloyal, disapproved by others, or risks promotion.

Legal responsibilities of nursing students

As a nursing student your only legal responsibilities are to not do any patients intentional harm. Your preceptor or instructor will be responsible for you. If you do a procedure it will be under their supervision/assistance only (never by yourself). Plus your nursing college will make you buy liability insurance before starting clinical.

When you become a nurse you are responsible for almost everything! You will be responsible for patient care, teaching students, supervising,
calling doctors if a patient needs attention, documenting and that is just to
name a few.

**Legal Responsibilities in Nursing**

1. **Safeguards for the nurse and student**

   Although as a practical nurse likely to work under the direction of
other nurses and physician, personally liable for any harm a client suffers
as a result of own acts. Healthcare facilities may also be legally liable for
their employee’s acts of negligence. Legal action involving negligent acts
by a person engaged in a profession may become malpractice lawsuits.

2. **Common-Sense precautions**

   Follow accepted procedures. Protect from possible lawsuits by always
performing procedures as taught and as outlined in the procedure manual
of healthcare facility. If these policies are incorrect or inadequate, work to
improve them through the proper channels.

3. **Be competent in practice**

   Always responsible for own behaviour. Refuse to perform procedures
for which have not been prepared. Ignorance is not a legal defence.
Neither will lack of sleep or overwork be accepted as a legal reason for
carelessness about safety measures or mistakes.

4. **Ask for Assistance**

   Always ask for help if unsure about how to perform a procedure. Do
not assume responsibilities beyond those of level. Admitting that do not
know how to perform a procedure is always better than attempting to do
it and injuring someone. Also question any physician’s order that do not understand, cannot read, or in which believe an error exists.

5. Document well

The importance of keeping exact records of all treatments and medications, as well as a record of a client’s reactions and behaviour, cannot be overemphasized. The health record is the written and legal evidence of treatment. The record is to reflect facts only, not personal judgments. Careful and accurate documentation is vital for each client’s welfare.

Careful documentation is perhaps the most important thing can do to protect against an unjustified lawsuit. If do not document a treatment or medication, legally the measure is considered not to have been done.

6. Do not give legal advice to clients

The laws governing personal and property rights of an individual are many and complex. Never attempt to advise a client on legal rights or financial matters. Encourage clients to confer their families and to consult an attorney.

7. Do not accept gifts

Accepting gifts from the client is unwise for several reasons. Some clients are considered vulnerable adults (e.g., mentally ill, retarded, or confused individuals) exchange of gifts could compromise professional position, and could be accused of coercing the client.
References


