Nursing Practice and the Law
What Every Nurse Needs To Know

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Welcome

Before we start…

If you have a cell phone please silence it.
If you need to take a call please leave the room to not distract the speaker and others around you.
Nurses have a responsibility to deliver safe care to their clients. They must have professional knowledge at their expected level of practice and be proficient in technical skills.
Nurses At Risk

Patients/ Families are more educated
More Medical Errors Everyday
Nurses are doing more with less
Nurses are now being directly named in many lawsuits
What Can Nurses be Sued for?

Medication Errors
Falls
Pressure Ulcers
Negligence

MAXIM

"No man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it."

-- Theodore Roosevelt, Message, Jan., 1904.
General Principles of The Law

Meaning of Law:
Those Rules that prescribe and control social conduct in a formal and legally binding manner
Laws are created in one of three ways

Statutory Laws: Created by various legislative bodies

Common Law: Develops within the court system as judicial decisions are made in various cases and precedents for future cases are set

Administrative Law: Is established through the authority given to government agencies such as state boards
Sources of Law

The Constitution: The Bill of Rights
The first ten amendments
State Constitutions can not deprive people of rights guaranteed by the US constitution
The Constitution is the foundation of American Law
Statutes

Are created by localities, state, legislatures, and the US congress. Nurses can influence statutory law as a citizen and healthcare worker.
Types of Law

Criminal Law
Civil Law
Toxic Tort
Criminal Acts are considered offenses against the state. Three categories of criminal law are Felony, Misdemeanor, and Juvenile.
Civil Law

Civil Law usually involves the violation of one person’s rights against another.

Areas of civil law are:
- Tort
- Quasi-intentional Tort
- Negligence
- Malpractice
Toxic Tort

Cases Brought Against Manufacturers: Examples: Vioxx, Toys with lead, Toxic Waste
Other Laws

- Good Samaritan Laws
- Confidentiality
- Slander and Libel
- False Imprisonment
- Assault and Battery
Standards of Practice
Nursing Standards

Established as professional guidelines to ensure quality of care
Used as criteria to determine whether appropriate care has been given
What is the “reasonable” care that a patient should receive: what would other nurses do in the same situation?
Nursing Standards

When a case is started experts are called in
Legal Nurse Consultants (Expert Witnesses) will testify to the standards of nursing care for the case: were the standards met

Examples: Acuity of Patients on the unit, were vitals/ pain scores documented, what is the standard?
Types of Standards

Internal Standards
Organizational Standards
Accepted state and national standards
Nurse practice acts
Patient’s Bill of Rights
Internal Standards

Developed by Institutions
Maintained in Policy and Procedure Manuals
Boards of Nursing and State Legislatures develop Nurse Practice Acts.

The courts have upheld the authority of the boards of nursing to regulate standards.

With the expanded role of nursing it is important that standards clarify the distinction between nursing and medicine.
Standards in Negligence or Malpractice

Standards are used as a guide. There are state, local or national standards. Institutional policies choose to either alter or adhere to the nursing standards of care. Expert opinions are given as appropriate standards of care. Available literature can substantiate current standards.
Informed Consent
Informed Consent

Without informed consent, many medical procedures could be considered battery.

A patient’s consent to treatment grants health care personnel the right to deliver care without the fear of prosecution.
Informed Consent

The Physician:
- Gives the patient the information
- States the risks and benefits
- Obtains the consent for the procedure

The nurse may be involved in the process by having the patient sign the appropriate forms.
Helpful Hints

A mentally competent patient has voluntarily given consent.
The patient understands the exact matter of the consent.
The consent includes the risks, alternative treatments, and outcomes.
The consent is written.
Common Causes of Negligence

“Dang, There go our malpractice insurance rates.”
Common Causes

Patient Falls
Equipment Injuries
Failure to Monitor
Failure to Communicate
Medication Errors
Avoiding Medication Errors
Medication Errors

Wrong Drug
Wrong Dose
Wrong Route
Wrong Time
Wrong Patient
Wrong Documentation
Appropriate Documentation
Tips for Credible Documentation

Documentation Should be:
Accurate
Truthful
Appropriate
Common Actions Leading to Malpractice Suits
The Six F’s

Failure to appropriately assess a patient
Failure to report changes in a patient’s status
Failure to document in a patient’s record
Failure to obtain informed consent
Failure to report a co worker’s negligence
Failure to provide adequate education
The Two Big Bad Ones

- Altering or falsifying a record
- Violation of either an internal or external standard of practice
When a Problem Arises

When served with a complaint, immediately contact legal counsel
NEVER sign any document without legal counsel
Notify your malpractice carrier if you are covered; immediately notify your institution
End of Life Decisions
End of Life Decisions

Do not resuscitate orders
Advance directives
Living Will
Durable Power of Attorney
Health Care Surrogate
Staying Out of Court
Prevention

Stay informed about new information related to your area of practice.
Insist that the healthcare institution keep personnel informed of all changes in policies and procedures and of new technological advances.
Prevention

Always follow institutional standards of care for practice
Delegate tasks and procedures only to appropriate personnel
Identify patients who are at risk for problems such as falls or the development of decubitis
Prevention

Establish and maintain a safe environment
Document precisely and carefully
Write detailed incident reports
File incident reports with appropriate personnel and departments
Recognize problematic patient behaviors
Nursing Litigation

Pressure Ulcers
Falls
Medication Errors
Failure to Notify Physician of Patient Condition
Cases That Generally Present in the Legal System

- Motor vehicle crashes, Pedestrian Struck
- Workers Compensation
- Violent Crimes
- Medical Errors or “Mishaps”
- Poor Outcomes including death
Documentation

Document anything that is important or relevant to the patient

Vital Signs and assessments per orders and/or standards

Any calls made to a physician

Any conversation with a charge nurse or nursing supervisor regarding a patient’s condition, family issues or if the patient’s acuity exceeds that of your unit
Incident Reports

Complete for any adverse event that occurs with a patient and/or family member

Falls, Medication Error, Equipment Failure

Alerts Risk Management Department so they can be proactive instead of reactive
What If I Am Called For a Case

Review your documentation

Try to recall what you can about the patient

Review what the standards of care are for your position and your unit

Tell the truth