Legal Issues in Nursing

R. Griggs-Gabbedon MSN, LNC, RN
Nursing Instructor

1

Objectives

- Describe the California Nurse Practice Act definition of nursing practice
- Discuss the role of the BRN
- Identify the legal controls of nursing practice
- Distinguish between statutory law and common law
- Discuss the differences between criminal acts and intentional and unintentional torts

2

Objectives

- Recognize common areas of negligence and liability
- Discuss the elements of intentional torts
- Summarize legal safeguards appropriate to utilize in nursing practice
- Relate the process of continuing quality improvement to documentation
- List methods to prevent litigation
- Describe legal responsibilities of student nurses

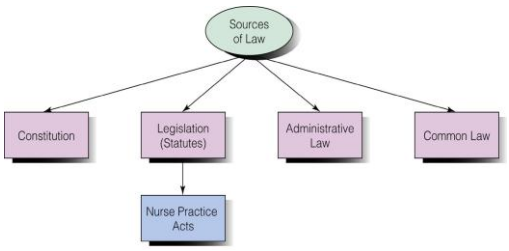
3

Objectives

- Explain the basic elements of informed consent
- Summarize the Patient Bill of Rights
- Discuss the Health Insurance Portability and Accountability Act (HIPAA)
- Explain the legal principles involved in do not resuscitate (DNR) orders

4

Overview of Sources of Law



5

California Nurse Practice Act

- Purpose:
  - Legal controls for the scope of nursing practice
  - Licensing requirements for nurses
  - Standards of care
    - To protect the public

6

California Nurse Practice Act

- Nurses who know & follow their nurse practice act and standards of care provide safe, competent nursing care

7

Nursing Practice

- Provides care
  - Individual's, families & communities
- Involves four areas
  - Promoting health & wellness
  - Preventing illness
  - Restoring health
  - Care of the dying

8

Role/ Regulation of the BRN

- Write rules & regulations to implement & enforce a nurse practice act
- Provides Licensure
- Ensure that schools preparing nurses maintain minimum standards of education

9

Voluntary Controls

- Nursing organizations can also choose to seek voluntary accreditation from a private organization
- National League of Nursing Accreditation Commission (NLNAC)
- Commission on collegiate Nursing Education (CCNE)

10

JCAHO

- An independent not-for-profit organization
- Governed by MD's, nurses & consumers
- Regulatory agency
- Goal: Sets standards by which health care quality is measured
- Accreditation is tied to funding***
  - http://www.jcaho.org

11

WASC

- Western Association of Schools & Colleges
- ACCJC
  - Evaluate & accredit public & private postsecondary institutions that offer two-year education programs and award the associate degree
- http://www.wascweb.org

12

Statutory Law

- Laws enacted by any legislative body
- Statutory (legislative) laws affecting nurses
  - Nurse Practice Act
  - Good Samaritan Act
  - Child & Adult abuse laws
  - Living wills
  - Sexual harassment laws
  - Americans with Disabilities Act

13

Common Law

- Laws evolving from court decisions
- Continually being adapted & expanded
- When deciding a ruling in a case, the court applies the same rules & principles applied in previous, similar cases

14

Sources of Laws

- Tort law
  - Defines and enforces duties & rights among private individuals that are not based on contractual agreements
  - A civil wrong committed against a person or a person's property

15

Tort Laws

- Examples: Applicable to Nurses
  - Negligence
  - Malpractice
  - Invasion of privacy
  - Assault
  - Battery

16

Intentional Tort

- **Act was on purpose or with intent**
- Liability may still exist even if no harm occurs
- Four intentional torts related to nursing
  - Assault/ battery
  - False imprisonment
  - Invasion of privacy
  - Defamation
    - (Libel/ Slander)

17

Elements of Intentional Torts

- Assault
  - "An attempt or threat to touch another person unjustifiably"
  - A person who makes a gesture with a closed fist is guilty of assault
- Assault in Nursing
  - A nurse who threatens a client with an injection after the client refuses to take the medication orally would be committing assault

18

Elements of Intentional Torts

- Battery
  - "The willful touching of a person (or the person's clothes) that may or may not cause harm"
  - If the nurse had given the injection without the client's consent
  - Liability applies even if there is a Dr.'s order

19

Liability

- Liability
  - "The quality or state of being legally responsible for one's obligations & actions and to make financial restitution for wrongful acts"
  - Nurses obligation
    - Prevent harm or injury to client
    - Maintain standards of care

20

Criminal Actions

- Deal with disputes between an individual and the society as a whole
- Examples:
  - Homicide, manslaughter, theft, arson, active euthanasia, sexual assault, illegal possession of controlled drugs
- If a nurse is found guilty of a criminal action: may lose his or her license

21

Elements of Intentional Torts

- False Imprisonment
  - "Unjustifiable detention of a person without legal warrant to confine the person"
  - False imprisonment accompanied by forceful restraint or threat of restraint is battery

22

Elements of Intentional Torts

- Invasion of Privacy
  - "A direct wrong of a personal nature"
  - The client has the right to privacy
- Nurse breaches confidentiality: HIPAA
  - Confidential client information
  - Intrudes on client's privacy
- Never discuss client situations in the elevator, cafeteria, or other public areas

23

Elements of Intentional Torts

- Defamation
  - "Communication that is false, or made with a careless disregard for the truth, and results in injury to the reputation of a person" (Kozier, pg 71)
  - Includes both libel & slander

24

Defamation

- Libel
  - Defamation by print, writing or pictures
  - The nurse writes in the chart
    - Due to Dr. Smith's incompetence by not returning my page, Ms. Jones did not receive her medication last night

25

Defamation

- Slander
  - Defamation by the spoken word by which a reputation is damaged
  - The nurse tells the patient the Nurse Jones is incompetent

26

Unintentional Tort

- **Negligence & Malpractice are examples of unintentional torts that may occur in the health care setting**

27

Elements of Liability for the Nurse

- Negligence
  - **Misconduct or practice that is below the standard expected of an ordinary, reasonable and prudent person**

28

Common Area's of Negligence

- #1 Medication administration
- Treatments
- Monitoring/ observing/ supervising
  - Failure to observe & take appropriate action
- Safety
  - FALLS

29

Elements of Liability for the Nurse

- Malpractice
  - **"Professional negligence"** meaning negligence that occurred while the person was performing as a professional
  - Malpractice applies to physicians, dentists, lawyers, & nurses

30

Nursing Malpractice: Six Elements

- **Duty**
- **Breach of duty**
- **Foreseeability**
- **Causation**
- **Harm or injury**
- **Damages**

31

Six Elements of Malpractice

- Duty
  - The nurse has a general duty of care
    - Even if the client is not specifically assigned to that nurse
- Breach of Duty
  - The nurse did not meet the "standard of care" or expectation
    - Failure to act as a reasonable prudent nurse

32

Six Elements of Malpractice

- Foreseeability
  - A link must exist between the nurse's act and the injury suffered
- Causation
  - It must be proved that the harm occurred as a direct result of the nurses failure to follow the standard of care

33

Six Elements of Malpractice

- Harm or Injury
  - The client must demonstrate some type of harm or injury
    - "Pain & suffering"
- Damages
  - If malpractice caused the injury, the nurse is held liable for damages

34

Incident Reports

- An incident report is an agency record of an accident or an unusual occurrence
- **Purpose:**
  - Make all the facts available to the agency
  - Contribute to statistical data about accidents
  - Help health care personnel prevent future incidents or accidents

35

Incident Report: Special Considerations

- Report should be completed as soon as possible
- **The incident report does not go into the clients record**
  - Purpose of report: alert risk management to the event

36

Incident Report: Special Considerations

- The facts of the incident should be noted in the clients record
- When an accident occurs the nurse should first assess the client & intervene to prevent injury

37

Consent

- **Client must be competent to give consent**
  - If the nurse is concerned regarding client competency you must report to your supervisor for guidance
- Consent is required before procedures are performed
- Battery exists if there is no consent
- Life-threatening emergencies
  - Implied consent

38

Two Types of Consent

- Expressed Consent
  - Oral or written agreement
  - Usually: High risk procedures need **written** informed consent
- Implied Consent
  - Exists with clients non-verbal behavior
    - Sit up to take meds, give arm for B/P
  - Consent is also implied in a medical emergency when an individual cannot provide expressed consent

39

Three Elements of Informed Consent

- Consent must be given voluntarily
  - No Coercion
    - Coercion invalidates the consent
- Client must be competent to understand
- Client must be given enough information to be the ultimate decision maker

40

Three Groups Can Not Provide Consent

- Minors: parent or guardian must give consent
  - Adult with mental capacity of a child: Appointed guardian must give consent (viewed as a minor)
- Pt. who is unconscious or injured in a way which prevents them from giving consent
- Mentally ill patients who have been judged by professionals to be incompetent

41

Exceptions

- In some states minors are allowed to give consent for:
  - Blood donations, treatment for substance abuse, mental health problems, reproductive concerns
    - STD's or pregnancy

42

Exceptions

- Some minors are legally permitted to provide their own consent
  - Married
  - Pregnant
  - Parents
  - Members of the military
  - Emancipated (living on their own)

43

Nurses Role - Consent

- Witness the client's signature on the document
- Confirms (3) things:
  - Consent is voluntary
  - Signature is authentic
  - Client "appears" competent to give consent

44

Legal Safeguards for Nursing Practice

- Following the Nurse Practice Act
- Standards of Practice
- Documentation
- Standards of clinical nursing practice
- Institutional policies & procedures

45

Nurses as Witnesses

- A nurse may be called to testify in a legal action
- Expert Witness
  - Special training, experience, or skill in a relevant area and is allowed by the court to offer an opinion on some issue within their area of expertise

46

Delegation

- Defined by National BRN (1995)
  - "Transferring to a competent individual the authority to perform a selected nursing task in a selected situation" (Kozier, 62)
- Legally nurses need to know the scope of practice of the NA
  - Job description, facilities policies & procedures, NA's skill level

47

Delegation

- **Important Concept:**
  - The nurse may delegate a task to the NA, however….
  - The responsibility for action or inaction remains with the licensed nurse
  - Get to know your NA's
    - Establish guidelines & expectations

48

The Impaired Nurse

- Refers to a nurse whose practice has been affected because of chemical abuse, specifically alcohol and drugs
- Concern:
  - Protection of Clients
  - Treatment for Nurse

49

Diversion Program

- Program instituted to assist impaired nurses in recovery
- Impaired nurses who voluntarily enter into a diversion program do not have their license revoked if they follow treatment requirements

50

Diversion Program

- Specific Guidelines
  - Work on general nursing unit, not critical care
  - No overtime
  - Work only day shift
  - Not allowed to administer or have access to narcotics
- Program requires: counseling, support group, periodic progress reports & random drug screening

51

Reporting Unsafe Practices

- Nurses may need to report nursing colleagues or other health care professionals for practices that endanger the health and safety of clients

52

Guidelines For Reporting

- Describe observed behavior only
- Write a clear description of the situation you believe you should report
- Make your statements factual & complete
- Report the matter starting with the lowest level in the agency hierarchy
- Assume responsibility for reporting (sign your name)
- See the problem through once you have reported it

53

Legal Protections in Nursing Practice

- Good Samaritan Act
  - "Laws designed to protect health care providers who provide assistance at the scene of an emergency against claims of malpractice unless it can be shown that there was a gross departure form the normal standard of care or willful wrongdoing on their part" (Kozier, p. 72)

54

Guidelines: Good Samaritan Act

- Limit actions to those normally considered first aid, if possible
- Do not perform actions that you do not know how to do
- Offer assistance, but do not insist
- Do not leave the scene until the injured person leaves or another qualified person takes over
- Do not accept any compensation

55

Legal Responsibilities of Student Nurses

- "Nursing students are responsible for their own actions & liable for their own acts of negligence committed during the course of clinical experiences"
- Nursing students are held to the same standard as RN's
  - Discuss

56

Legal Responsibilities of Student Nurses

- Be prepared for your assigned patient
- Ask for help in situations you feel inadequately prepared
- Comply with agency policies
- Comply with policies defined by the School of Nursing

57

Patients Rights & Responsibilities

- Informed consent
- "An agreement by a client to accept a course of treatment or a procedure after being provided complete information, including benefits & risks of treatment, alternatives to treatment, and prognosis if not treated"
- Client signs a form
  - ** Need a witness

58

Patients Rights & Responsibilities

- Patient Bill of Rights (1973)
- Revised 1992

59

Patients Rights & Responsibilities

- Right to considerate & respectful care
- Right to information (dx, tx, prognosis)
- Right to decide (plan of care)
- Right to advance directive (ex. Living will)
- Right to privacy (consultation, examination)
- Right to privacy (records, chart, labs)
- Right to request care/services/ referrals/ transfer to another facility
- Right to information
- Right to consent or decline services
- Right to be informed of hospital policies & procedure related to their care

60

AMA

- Against Medical Advise
  - Clients have the right to insist on leaving even though it may be detrimental to their health
    - Client advocate role: Make sure the client is aware of all risks of leaving up to and including death
    - Ask: Why do you want to leave?
  - Exceptions: Active TB patients
    - House Arrest

61

Patients Rights & Responsibilities

- American Health Insurance Portability and Accountability Act (HIPAA, 1996)
- Requires client's health information be secured
  - Only those with the right and need to acquire information regarding patients care/ status are able to do so
- Review HIPAA Compliance handout from Ms. Bloch

62

Patients Rights & Responsibilities

- DNR orders
- "Do Not Resuscitate"
  - Terminal ill clients, expected death
- Written when a client has expressed no resuscitation in the event of a respiratory or cardiac arrest
- Goal: dignified death, comfortable measures

63

Patients Rights & Responsibilities

- DNR orders must be clearly documented, reviewed and updated periodically to reflect changes in the clients condition
- Documentation: JCAHO requirement

64

Review Website:

- wwwrn.ca.gov/
- Nurse Practice Act
  - Statutes & Regulations

65

Questions???

The End… Thank you!

66