Chapter 3 Understanding Legal and Ethical Issues

Understanding Legal Issues

Types of Legal Actions [corresponds to Table 3-1]

- Constitutional law - due process and equal protection
- Statutory law
  - Nurse practice acts
  - Good Samaritan acts
  - Living Wills
  - Disabilities Act
- Contract law
- Civil (private) law
  - Based on the tort
  - Civil wrong committed against person or person’s property
  - Criminal (public) law
    - Felony or misdemeanor
    - Accidentally or intentionally causes harm to client
      - Manslaughter
  - Unintentional torts
    - Negligence or malpractice
      - Four elements (all four must exist)
        - Duty
        - Breach of duty
        - Harm
        - Causation
      - Defense - proving one or more of the elements was not met
- Intentional torts
  - Assault and battery - threat and following through with the threat
  - False imprisonment - fear of force or detainment
  - Invasion of privacy - breached confidentiality
  - Libel and slander - defamation
  - Loss of client property - not safeguarding client’s property

Regulation of Nursing Practice

- Licensure and registration
- Mandatory in US and Canada
- Permissive licensure not US
- License revocation defined in nurse practice acts
  - Incompetent practice
  - Professional misconduct
  - Conviction for crime
- Accreditation/approval of basic nursing education programs
Process of review to meet minimum standards of practice
- National League of Nursing
- State Board of Nursing

Nurse practice acts
- Legal definition and description of the scope of nursing practice for state or province
  - To regulate practice
  - To protect the public

Health Insurance Portability and Accountability Act (HIPAA)
- Privacy standards required by all health care agencies and providers
- Controls privacy of client information
- Protects client information by law [corresponds to Box 3-2]

Standards of practice
- Guidelines to ensure competent and safe practice
- Standards to evaluate quality of care nurses provide
- Standards outlined in the scope of practice in each state or province

Good Samaritan acts
- Protect health care providers who provide assistance at the scene of an emergency
- Protects from malpractice unless there is gross departure from normal standard of care or willful wrongdoing.
- Guidelines
  - Limit actions to first aid.
  - Do only what you know how to do.
  - Offer help; don’t insist.
  - Do not leave until injured person leaves or qualified personnel arrives.

Student nurses
- Be prepared to provide necessary care.
- Ask for help or supervision as needed.
- Comply with agency policies.
- Be responsible for own actions.

Nurses as witnesses
- Consult attorney first
- Expert witness to help court understand evidence
- Protection for nurses [corresponds to Box 3-3]
  - Question order client questions.
  - Question order if client’s condition has changed.
  - Question and record verbal orders.
  - Question illegible or unclear orders.

Incident report [corresponds to Figure 3-2]
Selected Legal Aspects of Nursing Practice
- Providing competent nursing care
  - Ways to minimize chances of liability [corresponds to Box 3-3]
    - Provide competent nursing care.
      - Anticipate potential sources of client injury.
Educate clients about hazards.
Implement measures to prevent injury.
Apply the nursing process to provide safe and effective care.
Assess and monitor appropriately.
Involve client in care decisions and conversations.
Approach client with sincere concern.
Follow through on client’s questions
- Circumstances for questioning a physician’s order
  - Question any order a client questions.
  - Question any order if client’s condition has changed.
  - Question and record verbal orders to avoid miscommunication.
  - Question illegible, unclear, incomplete, inappropriate orders.

Record keeping
- Ways to minimize chances of liability
  - Carrying out physician’s orders
  - Record keeping
    - Client’s medical record is legal.
    - Medical record can be produced as evidence in court.
    - Keep accurate and complete records of nursing care provided.

Incident report
- Agency record of an accident or unusual occurrence
  - Makes facts available to agency personnel
  - Contributes to statistical data about accidents or incidents
  - Help prevent future incidents or accidents
  - Not part of the client’s medical record
  - Completed by the person who identifies the incident occurred
  - Reviewed by risk management committee
- Information to include [corresponds to Figure 3-2]
  - Client name, initials, hospital or identification number
  - Date, time, place of incident
  - Describe facts of incident
  - Identify all witnesses to the incident
  - Identify any equipment by number and any medication by name and number
  - Document any circumstances surrounding the incident

Informed consent
- Client agrees in writing to accept a course of treatment or procedure.
  - Form is record of consent, not informed consent itself.
- Obtaining informed consent is responsibility of physician.
- Obtaining signatures on informed consent forms is responsibility of the nurse.
- Must be given voluntarily with the capacity and competence to understand
- Witnessing the giving of informed consent for medical procedures is responsibility of the nurse.
  - Witness exchange between client and physician.
- Establish client did understand.
- Witness client’s signature.
  
  Obtaining informed consent for nursing procedures is responsibility of the nurse
  - Include purposes and intended benefits of treatment
  - What client can expect to experience
  - Possible risks or negative outcomes
  - Advantages and disadvantages of possible alternatives

  Informed consent exceptions
  - Those who cannot provide consent
    - Minors under age of 18
    - Adults with mental capacity of a child
    - Unconscious or injured and unable to give consent
    - Mentally ill persons judged by professionals to be incompetent

  Controlled substances
  - Misuse of controlled substances leads to criminal penalties.
  - Impaired nurse - practice is negatively affected by drug or alcohol use.
  - Intervention programs for treatment may closely supervise an impaired nurse to prevent surrendering the nursing license.

  Sexual harassment
  - Violation of individual's rights; form of discrimination. Exists if:
    - Submission to such conduct is condition of employment
    - Submission to or rejection of such conduct is basis for employment decisions
    - Conduct interferes with work performance or creates offensive working environment
  - Strategies for inappropriate sexual behavior [corresponds to Box 3-4]

  Reporting crimes, torts, and unsafe practices
  - Must report colleagues for acts that endanger client health and safety
    - Describe observed behavior only, do not make inferences.

  Americans With Disabilities Act
  - Prohibits discrimination on the basis of disability in employment, public services, public accommodations
    - Provides clear, consistent, enforceable standards
    - Federal government plays central role in enforcement.
  - Employee must be able to fulfill the duties of the work role.
  - Enables individuals of normal intelligence who have a physical or learning disability to pursue a nursing curriculum through alternative learning methods.

Understanding Ethical Issues

Ethical Concepts
  - Values
  - Beliefs
  - Attitudes
  - Ethics
o Method to help understand morality of human behavior, practices or beliefs of a certain group, expected standards of moral behavior
o Moral concepts – right, wrong, good, bad, should ought

Nursing Ethics
° Code of ethics for licensed practical/vocational nurse [corresponds to Box 3-5]
  o Ethical standards of the Joint Commission on Accreditation of Healthcare Organizations
  o Social and technological changes
    • Cultural implications [corresponds to Box 3-6]
  o Conflicting loyalties and obligations [corresponds to Box 3-7]
° Making ethical decisions [corresponds to Box 3-8]
  o Rational and systematic
  o Based on ethical principles and codes
  o In the client’s best interest
  o Preserves integrity of all involved
° Specific ethical issues
  o Cost-containment
  o Breaches of client confidentiality
  o Use of advance directives
  o Informed consent and procedures
  o Care of HIV/AIDS clients
  o Abortion
  o Organ transplantation
  o End-of-life decisions
    • Euthanasia and assisted suicide
    • Termination of life-sustaining treatment
    • Withdrawing or withholding food and fluids
  o Allocation of health resources
  o Management of computerized information
° Advocacy [corresponds to Box 3-9]
  o Nurse as client advocate
    • Be assertive.
    • Recognize rights and values of clients and families.
    • Conflicts arise over issues that require consultation, confrontation, negotiation.
    • Work with unfamiliar community agencies and lay practitioners.
    • Advocacy may require political action.