Consumer’s Protection Act—implication on Nursing Practice

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Health care delivery system has grown up into an industry today and health service consumers are better informed than in the past about health and illness. Through newspapers, magazines, television and multimedia more information is available to the consumer. Many of them are aware of their rights and demanding a voice and partnership in the delivery of health care services. Years ago, health professionals, particularly physicians were considered “all knowing experts”. Very few patients questioned the physician, let alone demand their basic human rights.

Now consumers of health care are increasingly demanding to have a say in matters affecting their health care.

As consumers have become more aware of their rights, conflicts between patients, health care professionals and institutions have developed. Nursing is affected by this kind of situation in which nurses are also expected to answer questions, explain procedures and respect the rights and requests of the patient. Nurses are challenged to become advocates for clients.

It is necessary to understand the Consumer Protection Act first in order to realize its implication for the consumer as well as the nursing profession. The Consumer Protection Act enacted by the Parliament in 1986, has been drastically amended and its scope greatly widened by the amendment of 1993. The Act now covers all kind of services and all kinds of consumer transactions whether made in cash or in kind. It protects the consumer from the burden of restrictive and unfair trade practices and enables the consumer forums and commissions to award compensation not only for monetary loss in purchasing defective material or hiring deficient services but also for mental pain, suffering and harassment caused by defective goods or services.

Services rendered by hospitals & members of medical profession for consideration constitutes as defined in the Act. Deficiency in medical services gives the patient as a consumer the right to claim compensation. (Poonam Verma vs. Ashwin Patel (1996) 4 SCC 332.)

Nursing as a profession and nurses as an individual have long been advocating for the welfare of their patients. The impact of health care consumer movement has been to promote increased accountability on the part of all health professionals including nurses. Today’s nurse practitioners must be aware of nursing standards, legal issues in nursing, legal limits of nursing and legal liabilities otherwise he/she will be the first person to be penalized from the legal standpoint.

Special legal concerns in professional Nursing practices:

- Service areas of nursing practices are particularly fraught with legal risk.
- Crime: Violation of any law governing the practice of any licensed professional may be prosecuted as a crime even if no actual harm occurs to the patient e.g. giving medication with out physician’s prescription. Torts is a civil wrong committed against a person & may be either intentional or unintentional.
- Physical, emotional, economical harm may also result in. Negligence is the failure to act as a reasonably prudent person e.g. any nurse who does not meet accepted standard of care or who perform duties in careless fashion runs a risk of being found negligent. Reighton (1975) identifies some of the common acts of negligence. Medication error: fall of a patient from bed, failure to communicate changes in client’s condition, use of defective apparatus: abandonment: infection due to lack of aseptic techniques, loss or damage to client’s property, burns from hot water bottle, heating pads, oxygen, dressings & baths, overlooked sponges in operative procedures, error in identification of patient including babies.

Malpractices: is the negligence on part of a health care professional. Malpractice occurs when a professional fails to act as a reasonably prudent professional under specific circumstances that leads to harm or injury to patients. For example at bed time the nurse fails to put protective side rails on the bed of elderly disoriented patient and patient falls from the bed sustaining injuries; other examples are the nurse fails to carry out medical orders, the nurse abandon a patient needing care; nurse fails to make an accurate assessment of patient and act on assessment.

Assault and Battery: Assault is the threat or an attempt to make bodily contact with other person without consent. Battery is the unconsented or unlawful touching of a person e.g. a nurse thrusts a patient

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who doesn't eat well, the patient may resist or even refuse giving the patient an injection against his/her will even on a physician's prescription is battery. Patients have the right to refuse treatment even if the treatment would be in the best interest.

Informed Consent: All patients should be given an opportunity to give informed consent prior to treatment. Nursing must obtain consent for nursing measures to be undertaken. Nurses can witness patient's signing of informed consent documents but are not responsible for explaining the proposed treatment or are they responsible for evaluating whether the physician has truly explained the significant risks, benefits, and alternative treatment.

Invasion of Privacy: A claim of invasion of privacy may also be brought against a nurse e.g. if client has a V.D., the nurse should not disclose the information except if directly related to care and Rx. A nurse's unwanted intrusion in private family matters is another example of invasion of privacy.

False imprisonment: Making a person stay in a place against his/her wishes is false imprisonment.

Defamation of Character: Any communication that injures and individual's reputation and is disclosed by another person is considered libel (written) or slander (oral). For example if a nurse tells a client that his physician is incompetent, he/she could be held liable for slander. The nurse who makes such a comment could be sued for libel.

Preventing legal problems in nursing practice:
Legal responsibilities in nursing practice are becoming of greater importance day by day. But many nurses view the law with apprehension because they fear being named in a malpractice law suit. With increased emphasis on client's rights, nurses today must understand the legal obligations and responsibilities towards clients. Nurses who give competent care based on their education will seldom need to worry about a malpractice law suit. There are a number of effective strategies that professional nurses can use to limit the possibility of legal action.

Practice in safe setting: in order to be truly safe nurses must be committed to safe patient care. The safest situation is one in which agency employ an appropriate number and quality of personnel to address the number and activity of patients' procedures and personal practice that promote quality improvement; keep equipment in good condition; provide orientation to new employees; supervise all level of employees.

Communicate with other health professionals: The professional nurse must have open and clear communication with nurses, physicians, and other health care professionals. No matter how good the nursing is if the nurse fails to maintain clinical records, in the eyes of the law the care did not take place.

Meet the standard of care: The single most important protective strategy for the nurse is to be a knowledgeable and safe practitioner of nursing and to meet the standard of care with all patients. Meeting the standard of care involves being technically competent, keeping up to date with nursing standard of care, boundaries within which nurse practice. If a nurse does not perform duties within accepted standard of care they may place themselves in jeopardy of legal action. Indian Nursing Council (TNC), State Nursing Council Act's give authority to the council to maintain standard in the field of nursing education and practice of health care innovations. TNAI is another source of uplifting standard of nursing care, international code for nurses is subscribed by TNAI.

Promote positive inter personal relationship: Even in the face of unfavorable outcomes from health care providers, it is usually the unhappy patient that sues. Therefore, the best strategy for the professional nurse is prevention of legal action through positive interpersonal relationships with patient and team members.

Legal issues confronting practicing nurses today are many but the nurse should view the law not with apprehension but as a helpful adjunct to define nursing practice. Competent nursing care is an important part of all health care delivery system. Nurses aware of legal rights and obligations will be better prepared to care for clients. Knowledge of law is essential for all nurses in present health care market.

Bibliography