

The Nurse, within the frame work of her Rights nurses the patients, guided by weaving of Ethics, and she has to be aware of these Ethical and Legal issues in her practice.

Ethics signify morals. In all fields of human activities, the society has come to expect a certain standards of such behaviour and conduct in exercising their Rights. It is more so in care of professional services and parochially

dently.

Nursing practice demands that decisions be made in the patients' best interest. Talking of nursing practice in the next millennium, proper judgments on the part of the Nurse is called for, which may, at times conflict with the right of the patient to choose for himself. Most of the times the patient makes responsible decisions when consulted, but some other time he may not.

NURSING PRACTICE AND HUMAN RIGHTS

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in nursing.

An understanding of basic legal rights and obligations is essential to the competent practice of nursing in any setting. Not only does legal rights serve to define the parameters of the profession and the standards of professional conduct, but it also supports the basic rights of the individual that are the networks of our society.

Basic rights do not diminish by virtue of the role assumed by an individual, either as patient, Nurse, or a family member in the health care framework. But it is observed that the patient fails to exercise them because of her poor physical and mental condition. The Nurse during her practice justifies adjusting to these rights as unavoidable consequences of the patient's need of care.

This Nurse patient relationship should not be overpowered by the professional influence and inclination of patients to submit to that influence, but present both, opportunity and the susceptibility of the Nurse to act indepen-

However, alternative mechanisms are available to assure the protection of that patient's welfare in the event he feels threatened. Where such alternatives are not available recourse should be made to the courts.

The determinations of the nature and effect of individual rights require a cautious balancing of these rights, involved by careful examinations and analysis of all the situations. This is difficult, because it is an enforced responsibility on the Nurse practitioner. Here for eg. the Nurse may not respond to the patient's demand for a certain harmful food items or for discharge from the hospital. Her benevolent intention however, does not exonerate it wrongly.

In the psychiatric setting on the other hand, where the patients are characterized by impaired judgments and defective perception, it may be necessary for the Nurse to exercise her power for the benefit of the patient. But here the Nurse also can not arbitrarily jeopardize his basic rights.

Man lives in a society, where some standard of accepted behaviour is necessary. This standard is a compromise between individual rights and freedom

of choice, fear, pain, disability and mental illness. This outcome can be projected in three situations:

1. The individual's public behaviour which directly affects the society.
2. His private behaviour affecting his close friends and family.
3. His personal behaviour affecting himself directly.

However, all behaviour, that of the patient and the Nurse has the potentiality to affect the society during the health care. Hence, each State Govt. needs to exercise its authority to restrict some kind of behaviour based on public welfare and balanced against the individual rights. Public safety, sanitation, education and economy are good examples.

An alcoholic for example, is not allowed to drive for reasons of safety for himself and the public. Law has been enacted by states. But to what extent he may choose to drink (that is self detrimental) is yet to be taken up while talking of individual's rights.

BASIC LIABILITY OF THE NURSE

Liability describes the concept of being responsible for her own acts. When the Nurse's action affects the patient in a harmful way she will be expected to make satisfactory amends. Here the Nurse is guided by ethics and morals in the commitment towards patient care. Nursing involves care and other associated services. The modern concept of nursing sciences is undergoing radical changes and expansion calling for greater care to deal with the ethical problems. Such services, tend to attract legal problems. Legal aspect of nursing springs from legitimate expectations as well as the prescription of the services. In technical terms the legal aspects come from any deficiency of such services which give rise to tortuous liability.

A Nurse is expected to be



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[at the time of writing this article].*

qualified to practice. She is also expected to nurse patient with care and tenderness. Any deficiency, thereby, will invite legal complications. Therefore, the Nurse must take due care prescribed by the relevant science and technology in dealing with the patient, whether, in surgical matters or other modes of treatment. Her knowledge on the particular subject should be sound and efficient.

There are other laws enacted to deal with such matters. The new legislation under the name of "Consumer Protection Act, 1986" provides for acts against deficient services if such services are paid for or, promised to be paid.

Supreme Court judgment confirms that patients who received deficient services from medical practitioners and hospitals are entitled to claim damages under the Consumer Protection Act 1986. This service also includes nursing services. Therefore, the services rendered by the Nurse at the border line depends on the control of the medical practitioners. By and large the Nurses' duties and responsibilities are an integral part of the services received in the hospitals and therefore, they are subject to the disciplinary control of the Indian Nursing Council as well as the hospital authorities or community centre in which she is working.

Most Nurses function in a unique capacity in that they may incur liability through three routes.

1. As many Nurses practice through employment relationship, their harmful acts in that capacity can incur vicarious liability to their employers.
2. Again since major aspect of Nursing practice is the implementation of medical care, Nurses incur liability to physicians for the injurious result of their action in the implementation.
3. Nurses are independent profession-

als. A nurse, as an individual may be liable for her own actions. When these actions are of professional liability, the Nurse is responsible as a medical professional. The question of whether the Nurses will be independently liable or some other party may be vicariously liable in a given situation depends upon the specific facts in each case.

For example, a Nurse while advising a junior for administration of enema to an infant and does so independently, may find herself, independently liable for injury resulting from an error in the advice. However, this liability will depend on the definition of the act as one of being practice without license or malpractice and how the law recognizes it as an independent nursing conduct.

Following the Consumer Protection Act, certain nursing functions were recognized not to be under the physician's control, thus imposing liability on the Nurse and the employer institution.

More recently, the advances of Nursing education and practice received recognition of their corresponding responsibility for certain activities such as selection of injection sites, judgements regarding the need for physician's attendance and proper execution of nursing procedures.

BUT CLARIFICATION OF INDEPENDENT NURSING ROLE IS STILL INCOMPLETE, especially in India. But the pattern is set and the message is sound. Educated Nurses today can exercise professional judgement and expertise in activities of nursing practice. Along with it comes the responsibility of fulfilling it in accordance with the standards of the profession. Professional liability is the legal recognition and application of that standard.

The standard for determining nursing liability is not an arbitrary ration of the law designed by the court and enforced against individual Nurses. It

is a product of the current state of art, capability of provision by the profession that the patient can expect. In other words, it is a standard created by the profession itself. The education and practice equips the Nurse to assess the patient condition, to alert physician to ascertain that the physician has acted on that matter in accordance, or made appropriate communication through administrative channels if such actions are not attended to. However, the law recognizes the advance skills and assistance of professional Nurse as a reasonable standard of nursing care.

DEFENCES OF NURSES TO INTENTIONAL TORTS:

In event of actionable intentional torts the Nurse may be relieved of liability if she can establish that either she was acting so for her own defence in defence of other's or of her property. But these self defences are limited. The Nurse here must have a reasonable assessment to the weightage given to this harm and the action taken thereby for self defence.

RETRIBUTION: An intentional act against other may be justified when the act is committed in self defence. A Nurse who reasonably believes that she is about to suffer from grievous bodily harm may take action to prevent it. But if that action seriously harms the assailant (patient), the question will then arise whether escape was not possible? Therefore, Nurses should keep this consideration in mind while working with potentially violent patients or patient with evil intentions.

It is also to be remembered that self defence is not available to the initial aggressor (i.e. the Nurse) unless during the confrontation she ceases her overt actions and is subsequently forced to defend herself against the counter attack.



FORCIBLE RESTRAINT OF PATIENT AND THE NURSE:

In health care settings, situations arise when individual's freedom is restricted by confinement or restrict. This restraint may be physical or pharmaceutical sedation. These restraints without justification can constitute infringement on the patient's basic rights, which may be viewed as assault, false imprisonment or intentional infliction of emotional distress. Therefore, when restraint is used the Nurse should have fresh and up-to-date knowledge to justify her act to avoid suit for interfering with the patient's freedom. Justification here is generally found in (a) consent (b) privilege (c) reasonable defense. Restraint may be agreed to by the patient or someone with authority on his behalf. Here the patient who voluntarily commits herself for treatment also consents to the restriction of his freedom as necessary to the treatment process.

A patient clearly demonstrating his intent and capacity to physically harm himself and others, can be justifiably restrained on basis of conduct. But the nature and extent of restraint should exceed the time beyond the period of emergency. The Nurse may remain alert for it.

Justification for acts that interfere with the individual's right to be left alone is generally based either on consent or some legally recognized protection on such as privilege, or valid defence.

The subject of forceable restraint, is a serious consideration for those working in psychiatric settings needing an update. However, in each area while the Nurse is practising, she should be aware of her own limitations, her umbrella of self protection from law.

a) Physiological impairment resulting from traumatic or pathological brain damage or retarded development as in Down's Syndrome.

b) Chemically included impairment resulting from ingestion of products

responsible for distortion of conscious thoughts (e.g. alcohol, narcotics, hypnotic barbiturates, anaesthetics of hallucinogens)

c) mental impairment resulting from emotional disturbance causing perceptual distortions, exaggerated reaction to stressful stimuli and reduced ability to communicate.

The knowledge of these aspects make a Nurse a competent practitioner.

SUGGESTIONS AND RECOMMENDATIONS:

India today is not seeing or tasting the legal dragnet. But days are not far when along with the launching and momentum of "Consumer Protection Act, 1986" clubbed with the advancement of knowledge of Indian citizen regarding their Health Rights, the Nurses will find themselves in the legal dragnet.

Nurses in India are also to gather knowledge about legal implications in nursing and her safety in practising. It may be suggested that during the next millennium an effort should be made to include legal knowledge in the curriculum. The house should also be aware of the guidelines under which she will be protected by law when she takes an independent decision to care for a casualty at the road side accident with her professional knowledge, and also taking care of an "extremist" in the hospital setting bounded by her ethics and morals. The Nurse should be aware who are the parent bodies protecting her actions.

In doing so, a general awareness is to be brought in among the Nurses as it seems to be the need of the next millennium, by organizing national level, and state level workshops and emerge with some by-laws safeguarding the nursing practice in India too.



Karnataka State Institutes Best Award for Nurses

(NIMHANS
News letter,
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It is a welcome News that Karnataka State Government has first time instituted much awaited awards for Nurses in recognition of their outstanding achievements and services in the Nursing profession.

The TNAI has been advocating this persistently with State Governments and others. We hope that sooner similar steps would be taken by other State Governments. We also expect our State Branches and members to inform about such developments.

We convey out heartiest congratulations to the winners of the awards viz. Smt. C. Santhi (Staff Nurse); Smt. D. Rammani Premalatha (Ward Supervisor) working currently in the Neuromedical ICU, Stroke Unit and Surgical ICU of the National Institute of Mental Health and Neuro Sciences (NIMHANS) and also other Nurses in the state who have been recipient of the State Government Award. Needless to say that this recognition will go a long way in raising their morale to do better.

The award carried cash prize of Rs. 5000 and a memento.