The Nurse, the Patient and the Law

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A LAW is a rule of conduct established and enforced by the government of a society. Laws are intended chiefly to protect the rights of the public, e.g., Nurses Practice Acts, are intended primarily to protect the public and, secondarily, to protect the Nurse.

Public Law is a law in which the government is directly involved. Private law or Civil Law regulates the relationship among the people. The practice of Nursing comes under Civil Law. Laws may be regarded as standards of conduct. They make it possible for people to live together peacefully.

Sources of laws are : Constitutions the legislatures, the judiciary system; and the administrative regulations.

The law is a reflection of public opinion and of civic and social movements within a community. The law, therefore, is not static: rather, it is constantly changing.

In India, the existing legislative regulation of Nursing and Nurses' Associations comprised mainly the Indian Nursing Council Act of 1947 as amended by Act LXXV of 1950 and by Act No. XLV of 1957 (Danial Lalifi, 1987).

People place a great deal of trust in health professionals. It, therefore, seems reasonable for individuals to expect that the people who provide health care are qualified to practise their profession and that they will be assured of safe and competent care in their hands. It also seems reasonable to assume that their basic rights as human beings will be respected by all who care for them.

Although Nurses are not responsible for all aspects of health care, they have to ensure safe and competent care and that the fundamental rights such as the right to courtesy, to privacy and to information on the patient's condition, will be safeguarded during the process of care.

The Nurse should be familiar with the International Code of Nursing Ethics and other such codes, which describe social responsibilities considered important in Nursing practice. She should also be familiar with the laws in her state concerning the provision of health care to the public and particularly with the Acts that control the practice of nursing. She should be aware of her functions and responsibilities. She should be familiar with the various charters that have been developed to outline consumers' rights in the health care system. She also should know how the law protects the patient in this regard. She should also be aware of her own legal status both as a student and as a Staff Nurse.

Licensure and Registration

A licence is a permit granted by a government agency to an individual to engage in the practice of a profession and to use a particular title (Du Gas & Du Gas). The purpose of licensure is to protect the public from unqualified Nurses. The individual must meet certain requirements laid down by the Licensing Board and also pay a fee, in order to receive a licence in a particular field of endeavour. The Regional Councils of Nursing issue licences to registered Nurses who have successfully completed a course of studies in a School of Nursing recognised/accredited by the State Board and have passed the qualifying examination. Nurses returning to active practice after being out of Nursing for a while may be granted licensure by reinstatement.

Nursing is developing/changing so rapidly at the present time that many authorities feel that any Nurse who has been out of the work force for five years or more should undergo some refresher course before engaging in active practice again. Also, some authorities feel that both licensure and registration must be renewed at some interval, say five years, and continuing education should be a mandatory requirement for continued practice.

In some countries the three reasons for revoking a licence are professional misconduct, incompetence and negligence. This makes a Nurse perform her job carefully and safeguards the public from untoward harm.

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The Legal Status

It is important for a Nurse to know her legal status. A student Nurse should remember that even though she may be considered an employee of the health agency, she still is responsible for her own actions. Anyone who gives Nursing care, a student or a staff, assumes certain duties, and it is expected that those will be carried out reasonably under the circumstances. Under the law, the individual as well as his employer is liable under the rule of respondent superior. Thus, if a Nurse is negligent and a patient is harmed, both the Nurse and her employer can be sued by the client.

The Nurse is not absolved of responsibility for her actions when she is carrying out the orders of a physician. The law states that the Nurse must understand the cause and effect of the treatment that she undertakes. If she carries out an order that she knows is wrong she is guilty of negligence. Every time. patient's safety must be paramount.

If the Nurse undertakes work that she knows is beyond the scope of her professional training, she may be considered negligent or guilty of malpractice.

Consumers' Rights

An average citizen of today is much more knowledgeable about the complicated mechanism of the human body and the things that can go wrong with it, than his ancestors. He learns from the mass media about the latest advances in medical treatment and surgical procedures. He also feels that he has a right is question the treatment he is being given, to have a say in his treatment and to be kept informed of his progress.

Consumer rights in Health Care are : Right to be informed; Right to be respected as an individual with the major responsibility for his own health care; Right to participate in decision making affecting his health; Right to equal access to health care (health education, prevention, treatment and rehabilitation).

Accountability, Safety and Quality

One of the most important concerns of individual Nurses and of National Nurses' Associations is to ensure that the patient receives safe and competent Nursing care regardless of the setting or the circumstances under which that care is given.

The term 'Accountability' means basically that a person is answerable or accepts responsibility for his/her own actions. The Nurse, who claims to be a professional must be able to "account" for the care she renders.

'Safety to Practice' means simply what it says. The Nursing profession makes it sure that students or fresh graduates have the knowledge and skills necessary to practise Nursing competently and without harming the people to whom they render care.

'Quality Assurance' refers to a programme designed to try to ensure that health care provided to clients is of good quality. Four of the principal elements that can vary and affect care are : (1) The providers, that is, the people who give the care — the Nurses, physicians, etc. (2) The standards that are maintained in the agency providing care (3) The environment or setting in which the care is given. And (4) the recipient of care, that is the client himself.

Legal Issues

Torts and Crimes : A tort is a legal wrong committed by one person against the person or property of another. The injured party may sue for damage and if the suit is successful, he is usually paid compensation.

A crime is also a legal wrong but it refers to a wrong committed against the public and punishable by the state. The punishment for a crime is either fine of imprisonment.

Negligence and Malpractice: Negligence is defined as the failure to exercise that degree of skill, care and diligence exercised by professional Nurses in the light of the present state of Nursing sciences in comparable situations. It usually means failure by the Nurse to take the appropriate action to protect the safety of the patient.

Malpractice has been defined as "any professional misconduct, unreasonable lack of skill or fidelity in professional or judiciary duties, evil practice, or illegal or immoral conduct" (Anderson, 1970). The term "malpractice" is virtually synonymous with professional negligence. Any individual, professional or non-professional, may be sued for negligence. When the negligence is on the part of a professional person, it is deemed malpractice.

Common Acts of Negligence are : Overlooked sponges, instruments; Needles and the like inside the surgical wound; Burns by hot

water bottles; Inhalators, enemas; Sitz baths, etc. Falls due to slippery floor; Injury to dependent patients by falls; Injury due to abandonment, e.g., leaving a baby alone on a table; Injury due to defective apparatus or supplies; Injury to patients as a result of wrong medicine, wrong dosage, wrong patient, wrong concentration; Loss of or damage to a patient's property; Injury due to administration of injections; Injury due to administration of blood; Injury due to failure to communicate important information; Injury due to hospital infections; Failure to report to the health agency any accidents, losses or unusual occurrences and the like.

Good Samaritan Laws

Some countries have enacted legislation designed to protect the professional practitioner from malpractice suits arising from care given to the injured at the scene of an accident or other emergency. Some of these statutes cover physicians only, others, all practitioners of the healing arts. These laws are usually referred to as 'Good Samaritan Laws' and are intended to encourage qualified people to give aid in an emergency. In general, these laws protect the individual who renders emergency care from civil liability for this care, unless he or she is guilty of gross negligence or extreme malpractice in giving the care.

Assault and Battery

Assault refers to attempts or threats to do bodily harm to another. Battery is "the unlawful beating of mother or the carrying out of threatened physical harm" (Creighten, 1981). Assault and battery are considered criminal offences as well as torts.

Fraud

Fraud is wilful and purposeful misrepresentation that could cause, or has caused, loss or harm to a person or property. Misrepresentation of a product is a common fraudulent act. In Nursing, persons fraudulently misrepresenting themselves to obtain a licence to practice may be prosecuted under Nurse Practice Acts. Also, misrepresenting the outcome of a procedure or treatment may constitute fraud.

Informed Consent

One of the most fundamental rights of patients is the right to consent to treatment, except in an emergency when treatment is a matter of life and death and the patient is unable to give permission and the patient's next of kin do not accompany the patient.

Informed consent is taken to mean that the patient has been given : An explanation of the condition; A fair explanation of the procedures to be used and the expected consequences; A description of alternative treatments or procedures; A description of the benefits to be expected (net assured); An offer to answer the patient's inquiries; An understanding that the patient is not being coerced to agree and may withdraw if he changes his mind (Kelly, 1976).

Invasion of Privacy

Necessary exposure of a patient by procedures essential to his care is not ground for invasion of privacy. However, if a patient is exposed to public, either personally or through pictures or recordings, the person responsible for the exposure can be held liable. This does not hold if the patient has given consent for the exposure. Unauthorised exposure even after death may constitute Invasion of Privacy. Certain acts by Nurses could constitute Invasion of Privacy as the following examples illustrate : Unnecessary exposure of patients while moving them through hospital corridors or while caring for them in wards/dressing-rooms. Talking with patients in shared rooms (history taking); Discussing information concerning patients with persons not entitled to the information; Using tape recorders, computer banks and the like, without taking precautions to assure the patient's confidentiality; Preparing written or oral class assignments about patients without concealing the patient's identify; Carrying out research without taking proper precautions to assure the anonymity of patients.

Defamation of Character

Another area of the law of which the Nurse should be aware is that of suits arising from defamation of character. The term 'defamation of Character' means that a person's reputation is damaged by written or spoken words that tend to lower his esteem in the eyes of other people. The Nurse should always be careful not be discuss patients except with others who are concerned with their care.

Wills

Nurses are often asked to witness a will for a patient. A will is a declaration of an individual's wishes regarding what is to be done with his property after his death. A will must be in writing and signed by the testator (individual making the will). It contains signature of two or three competent witnesses.

Controlled Substances

Nurses are also involved in the control and administration of narcotics and other potentially harmful drugs. Only physicians, dentists, veterinarians can prescribe and dispense narcotics and other controlled drugs and Nurses can administer if written instructions are given by the physicians. In some instances she may administer these drugs under 'standing orders' list. The Nurse must be careful when handling narcotics to see that they have been ordered in writing by a duly licensed physician and that careful records are kept of their use.

Defence in Law Suit

Many authorities in U.S.A. and Canada recommend that each Nurse must carry her own malpractice insurance to cover the cost of lawyer's fees and possible damages because citizens of their countries are aware of their rights as a patient from the health care agencies.

The best defence in a Nursing malpractice law suit is competent Nursing. However, Nurses should be aware of the legal and ethical basis of Nursing practice. Also, Nurses should know their legal status and responsibilities. Nurses must know their job fully and should be proficient workers to prevent damages to a patient. A Nurse should perform her job scientifically and must know the outcome of her activities.

Though in India a law suit against Nurses is not so common as yet because most of our countrymen are not aware of their rights, it is not far away, when Indian literacy rate will increase and people will be aware of their rights and Nurses will be questioned and lawsuits may be filed against them for their malpractice. So it is our responsibility to prepare our future Nurses on a more strong basis. Future Nurses should be taught to 'account' for their job since Accountability is the strong tool of any profession. Future Nurses should also be taught to record and report their activities performed properly. Because, documentation is the strong evidence of any activity. Nurses must be taught to speak to protect themselves and the profession, whenever required. This all will help us Nurses to ensure the existence of the profession and will help in further development of our profession.

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Distance Education

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at local and regional levels for quality assurance.

The programme being highly technical and skill-oriented in nature, quality can be ensured by producing quality print material (self instructional) with appropriate tutorial support, guidance and counselling and intensive practical contact programme, satellite transmission, electronic media projects, case studies, exercises, etc,, and proper feedback system to monitor the effectiveness of the programme.

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