Legal Aspects in Nursing

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NURSING is legally sensitive because it is a people's business. In Nursing, people eare for people. If the nurse dealt only with inanimate objects in her profession her mistakes would not ordinarily result in a law suit. The nurse deals with people, her mistakes directly and perhaps immediately affect another person, the patient, who may well be in a bad mood because he is ill.

In a democratic society, the legal system provides a framework inside which all sections of the community interact. It establishes the rights and privileges of the individual and makes provision for impartial justice. All citizens must be aware of their legally defined duties and rights and should have an understanding of the laws which govern their professional and personal lives. To quote Mahatma Gandhi, "The true source of rights is duty. If we all discharge our duties, rights will not be far to seek." Fist legal responsibility of every citizen, and thus of a nurse is to perform his/her duty ethically. Ignorance of a law is not accepted as an excuse for violation of law. As in all branches of medicine and surgery patients who feel they have suffered harm as a result of professional negligence can sue for damages in respect of injury sustained. Nurses have to be aware of the legislation that affects their professional work, which may be defined as responsibilities in respect of: 1. The Provision of safe, effective nursing care. 2. The result of the Community. 3. The employing authority. 4. The nursing profession.

In brief, the various important laws of nursing profession are :

1. *Criminal Law* which deals with major and minor crimes. The crime involves the deliberate commission of an act forbidden or omission of an act required by law.

2. *Civil Law :* This is concerned with disputes between individuals and includes the law of torts. The word 'Tort' is of french derivation and means "Wrong". So Tort is described as civil wrong committed against another person or his property. Torts relevant to nursing are negligence, defamation, false imprsionment. Civil laws also deal with contracts and law at meetings.

3. *Bye-laws* are regulations issued by employees or organizations e.g. professional organisation.

The Poisons Act

This act controls the packing, sale and use of poisonous substances in the community. All poisons are listed on one of the eight schedules, and for each schedule there are specific rules regulating the use of the poisons listed.

The schedules which are of particular importance to nurses are :

Schedule '4', containing drugs called restricted drugs. They can only be obtained on written prescription and they must be kept in a locked cupboard.

Schedule '8', containing drugs of addiction. The regulations relating to the drugs of addiction : 1. They must be stored in a separate cupboard, away from all other goods. 2. The cupboard must be firmly fixed to a wall and must be kept locked. The key must be in the possession of an authorized person at all times. 3. A register must be kept in which full details are recorded of all drugs received from the Pharmacy and drugs disposed of any way, e.g., administered to patients and returned to Pharmacy.

The Hospital Pharmacist is responsible for all substances supplied by the pharmacy department and nurses are *NOT* permitted to : 1. Affix a label to any type of container. 2. Alter a label by adding, changing, deleting words or figures. 3. Transfer a substance from one container to another, except when diluting a lotion for immediate use.

The Hospital as an Employer

The controlling authority of a hospital is deemed to be the employer. In most cases there is a committee or board of management, but in small private hospitals, such an authority may not exist and the owner is the employer.

The employer is legally responsible for the acts committed by all employees in the course of their duty and must ensure :

1. Employees possess the required qualification, registration and level of competence. Employer ensures whether the nurse possesses the licence of practising nursing, from a recognised organisation, of an approved course and the conditions of supervision. The employer holds a competitive examination to check the level of competence.

2. All legal requirements are met, including valid contracts of employment.

3. Safety standards are observed in relation to buildings, equipment and standard of patient care.

The committee of management delegates responsibility in each of these areas, to the relevant sections of hospital staff.

The Nurses' Responsibility

The legal liability of an employer does not obsolve a nurse from individual responsibility and legal action can be taken against hospital and a nurse, or against the nurse as an individual.

Nurses are less likely to fail in their responsibility if :

1. They remember that all patients have the rights and privilages accorded to every citizen and it is the

duty of nurses to protect these, whenever patients are unable to do so for themselves.

2. They require the knowledge, understanding and level of competence necessary to ensure safe, effective nursing care.

3. They do not take tasks which are beyond their level of training and competence.

4. They maintain a high ethical standard in their professional life.

Some of the areas in which legal action may be taken against a hospital are :

1. Negligence which results in injury to a patient or staff member.

2. Negligence which results in injury to someone visiting a hospital.

3. Loss of, or damage to patients' property.

4. Assault/Battery.

5. Detention of a patient against his/her will.

6. Defamation.

Care of Property

On admission to hospital, patients should be advised to send home any personal possessions which they will not require during hospitalization.

They should be informed that the hospital does not accept responsibility for the personal possessions of patients unless there are exceptional circumstances. If the patient is unable to send the articles to his home, the items of value may be deposited in the hospital safe, after a list of items has been made, and signed on a correct record, by the nurse and the patient. Valuables should not be given to relatives or friends without the patient's consent and a signed receipt taken from them. If any patient is unaccompanied the valuable may be signed by the nurse and then handed over to the incharge. In case of death of the patients the items of minor value should be handed over to the next of the kin but items of major value should be handed over to the legal representative—with proper receipt.

Consent to Procedures

Standard forms are provided on which written consent must be obtained before an anaesthetic is given, surgery performed or any procedure carried out which is out of the ordinary or involves a risk for the patient. Consent should be obtained when it is considered necessary to take action which might be regretted by the patient, e.g., cutting patient's hair, shaving beard. Permission should also be given by the person incharge, before such procedures are performed. Consent is valid only when the person giving consent:

1. Has reached the legal age of consent.

2. Does so freely without being subjected to force or fraud.

3. Signs a form on which the acts to which consent is being given, are clearly specified.

4. Has the mental capacity to fully understand all that is involved.

When the patient is a child or mentally incapacitated, parent or guardian must sign the form.

1. The age of consent depends upon circumstances. A consent form may be signed by a patient who: a. is 18 years of age or older, or b. is married, c. is 16 years, self supporting and living away from home.

When the patient is between the ages of 16 years and 18 years, unmarried and living at home the consent form should be signed by the parents or guardian, and the patient.

In case of emergency, when the patient is unable to sign the consent form and there nobody is present who may do so, the responsibility for authorizing treatment is taken by a Medical Officer.

2. It is the responsibility of the medical officer to give the patient and/or the relatives, a detailed explanation of any surgery or other treatment which is proposed and what long-term effect it may have.

Every patient has the right to refuse any form of treatment and may be asked to sign a declaration to this effect.

3. Consent must be freely given and not as a result of harassment, pressure or trickery by staff or relatives.

4. The extent of the treatment to which Consent is being given, should be indicated. Forms commenly used are worded so that permission is given for a surgeon to perform any surgery considered necessary.

5. Consent taken may always be witnessed at least by two persons.

Safety

The maintenance of safety in a hospital can be divided into two areas : 1. Provision of Safe Environment, 2. Provision of Safe Patient Care.

Confidentiality

Nurses have an ethical obligation not to disclose confidential information which is acquired about patients in their care, except when such disclosure occurs during the course of their professional duties. Information classed as confidential, may be anything related to the patient's condition, treatment being given, the prognosis or anything relevant to the patient's private life, and disclosure of such information may lead to legal action against the hospital.

The patient's right to privacy should be respected and his/her affairs should not be discussed with other patients, or with non-professional staff or members of the general public.

Nurses should not discuss members of the hospital staff with or in the hearing of patients or relatives of patients and if there is a query made about diagnosis or treatment, it should be referred to the person in charge.

Trespass

Trespass is a term used to describe a number of

unlawful acts, e.g., 1. Searching a person or person's property without authority. 2. Entering or remaining in premises without owner's consent. 3. Opening letters or parcels addressed to others without their consent.

The first and the last examples are particularly relevant to nursing and nurses should remember to obtain permission before becoming involved in either of these situations.

Witnessing Wills

A patient wishing to make a will should be given all the assistance required, but it is a rule in most hospital that nurses may not act as witnesses.

The State Board of Nursing

The State Board of nursing is sometimes known by other titles, such as the Board of Nurse Euaminer. The board of nursing is responsible for approving schools of nursing, visiting the schools, administering licences, examinations and issuing and renewing nursing licences. It also has the authority to suspend or rovoke a licence. The Board is subject to the conditions defined in the law, but it usually has some way in its interpretation of these conditions.

The Licensing Examination

The nurse's first responsibility is to pass the licensing examination upon successful completion of an approved nursing programme and to obtain a licence to work as a licensed practical nurse or a recognised nurse.

The recognised school sends the transcript of the candidate's records with complete examination form and the prescribed fee. The Council informs the date, time and place-after setting the papers and selecting particular examineer for the particular school.

Nursing programme prepares the candidates for the examination by various means set in their programmes or class rooms teaching, demonstrations, field experience. If any student nurse is not able to pass the final examination she cannot practise nursing ethically but she can be an assistant nurse till she passes the examination.

Cause of Revoking or Suspending a Licence

The law defines the conditions under which a licence may be revoked. These conditions under which a licence may be revoked. These conditions include misconduct—such as habitual drunkenness, serious crimes such as robbery or murder, serious negligence in caring for patients or practices that might endanger patients such as drug dependency.

Negligence : One of the common causes of law suits instigated by the patients is negligence. Negligence is defined as harm done to a patient as a result of neglecting duties or procedures. Negligence is the omission of ordinary precautions expected of a responsible person.

Malpractice : Malpractice is the improper treatment of a patient resulting in illness or injury (whereas negligence is an error of omission, malpractice is an error of commission).

Assault and Battery : Assault and Battery are the threat of physical damage and the carrying out of that threat. Assault may be a violent act, either physical or verbal. Battery is a physical striking or beating. Either or both of these acts may be subtle such as calling the patient, unkind names or physical restraining or solitary confinement. By law a person cannot be restrained against his will unless he has been convicted of a crime or declared mentally incompetent.

Examples of situations in which the nurse might be liable

Some common types of situations that might cause injury to a person and involve legal liability are the following :

Burns from hot bags, heating pads, contact with steam pipes or scalding water, chemicals either improper mixture or improper application.

- — Sponges overlooked in surgical wounds.
- — Falls on slippery floors.
- — Falls from an unprotected bed or crib by an unconscious or irresponsible patient.
- — Injury from wrong medicine or wrong dosage.
- — Injury from blood transfusion—Mismatching —Incompatability
- — injury from visibly defective or improper tested equipment
- — Injury from wrong infusions
- — Injury from wrong site of injections.
- — Injury from cross infection or hospital born infection.

Legal Responsibility in an Emergency

In some States a person who witnesses an automobile accident is required by law to give aid to the victim. No person, in our country, is legally bound to render an aid, but if somebody voluntarily does so, he/she should act as a reasonably wise person would.

In a true emergency situation which involves saving a life/ only a medical act involving recognised first aid practice an be performed without being considered a violation of medical practice. Whether it is performed by a registered nurse or practical nurse or a layman. However, it must be remembered that substantial proof must be presented in court which will attest that it was in fact an emergency.

The Best Defence in Nursing Malpractice Lawsuit

The best defence in a nursing malpractice lawsuits is of course, competent nursing. If the patient has not been injured by the nurse's conduct, he cannot recover damages from the nurse. The problem lies in proving that the nursing care a patient received was competent. The statutes of limitations usually allow the aggrieved patient to file a lawsuit years

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antenatal programme. The approach will vary with different groups of mothers, depending upon their social and educational Backgrounds.

Don't and Do's

We shall think of what are the don'ts :

1. Do not use any drugs during prsgnancy. 2. Avoid smoking. 3. Do not expose to radiation. 4. Be aware of any warning signs. 5. Do not refuse to take food. 6. Don't neglect your health.

1. Now we shall see what are do's : 1. Do come for medical examination periodically. 2. Do some crafts. 3. Do take care of personal hygiene. 4. Take care of dental care. 5. Do some exercise. 6. Do keep up spacing between the pregnancy.

Psychological Preparation : Antenatal care does not mean only palpation, blood and urine examination and pelvic measurements even though these are important aspects of antenatal care. Mental preparation is as important as physical or material preparation. Sufficient time and opportunity must be given to the expectant mothers to have a free and frank talk on all aspects of pregnancy and delivery. This will go a long way in removing her fears about confinement. The mothercraft education at the M.C.H. centres helps a great deal in achieving the objective.

Family Planning Education : Family planning is relatively a new component of M.C H. services. It is related to every phase of the maternity cycle. The mother is psychologically more receptive to advice on family planning than at other times. Educational and motivational efforts must be initiated during the antenatal period. If the mother has had 3 or more children, she should be motivated for puerperal sterilization. In this connection the call-India hospital post-partem programme service are available to all expectant mothers in India.

Preparing Pregnant Mothers for Delivery : Providing safe delivery. In any complication refer to major institutions for safe delivery and to attend to the needs. It is suggested that a Paediatrician should be in attendance at all antenatal clinics to pay attention to the under-fives accompanying the mothers.

Hence, we feel for health education to individuals or groups, must follow certain principles like :

1. Interest of the person, 2. Participation of the group. 3. Known to unknown, 4. Comprehension. 5. Reinforcement. 6. Motivation. 7. Learning by doing. 8. Soil seed and sower. 9. Good human relation. 10. The leaders.

All the combined audio-visual aids should be used for the health education to the mothers.

Health education to pregnant mothers incorporated in the programme of comprehensive medical care provided by the primary health centres in India.

In short, health education should be the concern of everybody engaged in any form of community welfare work. In the community level we can recognize their major health problems. During our visit we see too, how important are opportunities for us to educate the pregnant mothers.

Health education should be pursued by all health workers, utilizing the contacts which result naturally from their activities without any narrow compartmentalisation. In the more specialized and sometimes fragmented pattern of health care which was developed in our own country and community there is something to be gained from a similar breadth of outlook.

The continuation and expansion of educational programmes for nursing personnel depends on the ability of these programmes to recruit and keep qualified faculty as the clinical service components grow. Only in this manner we can keep pace with the demand for maternity health care specially during pregnancy. Professionals have to fulfil their responsibility for improving maternal and child health in this country.

Apart from this education we want to give more importance to the agewise medical care. In the toddler and pre-school age one should emphasise on completing all the immunity dose correctly and giving warm treatment and so on, in the puberty age on giving more psychological support and guidance to avoid confusion and conflicts due to sudden growth of body and physiological changes. In the aged groups giving importance in the spiritual aspects and care of other illnesses becomes necessary.

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after the alleged negligence took place. How many nurses can remember in detail the care they rendered to a patient last week, much less last year? How many patients can a Nurse rely on her memory to recall nursing care in minutest detail often required in nursing malpractice suits. Therefore, the only practical way for a nurse to prove that she rendered good nursing care to a patient is to docoment the care rendered in the patient's record. If good care was given and documented, the medical record is the nurse's evidence in the courtroom, even if the nursing care given was excellent, if it is not dacumented in the medical record, the nurse is at a distinct disadvantage in the law suit. Of course, good documentation of the care given is vital part of good nursing eare as well as good "legal nursing". The quality of documentation of care in nursing notes in the medical record should be subject to continual critical evaluation in the hospital setting.

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