

Legal Implications in Nursing

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EVERY sane person is responsible for his own actions, and as such, every professional nurse is responsible for her actions in her own practice. Negligence and ignorance are two main reasons which may legally involve nurses. And, therefore, the very thought of legal implication and involvement should be of concern to every nurse and every institution dealing with human lives. If the nurse is once committed to a court of law, she has to face a great deal of problems during legal procedures. She should be prepared to face the consequences as well.

Ignorance and negligence are the two great crimes for which a nurse can be held liable.

Negligence

Negligence is a culpable omission of an act through carelessness or oversight, which causes an unintentional injury to another party, it is a failure to do what a person of ordinary prudence is expected to do. But in medico-legal phraseology it is a malpractice by a professionalist.

As the nurse is aware of the accepted standards of care and treatments due to her education and experience, her responsibility cannot be transferred to another person. While malpracticing she may be held responsible for her own negligence.

Legal Implications

As the legal and medical professions are developing more involvement of both professions is witnessed. The tendency to bring suits against doctors, nurses and their institutions is increasing because of the following concepts :

- (i) Professional jealousy.
- (ii) Acceptance of professional responsibilities.
- (iii) Increasing awakening of social consciousness that makes every individual aware of others' responsibilities.
- (iv) Desire for money and publicity.
- (v) Broader concept of health needs by the public.
- (vi) Newer knowledge gained from scientific research.
- (vii) Hazards of scientific and electronic equipment in general practice.
- (viii) Higher education and professional preparation for nursing practice.
- (ix) Care and precautions taken by the institutions to diminish liability risks.
- (x) More emphasis on classification and job description of employees.

It is very important for the nurse to know her legal and professional relationship. It is not sufficient

for her to know only her own legal responsibility to the patient, but as an employee she should know the wrongs, which may affect her, her institution and her employer. She should not ignore the fact that she is morally and legally obliged to all around her. She should understand the responsibilities not only as a professional nurse, but as a citizen also, because she is a citizen first and then a nurse.

Professional Nursing

The American Nurses' Association recommends that nursing practice be legally defined as follows :

1. The practice of professional nursing means the performance for compensation of any act in the observation, care and counsel of the ill, injured, or infirm, or in the maintenance of health or prevention of illness of others, or in the supervision and teaching of other personnel, or the administration of medications and treatments as prescribed by a licensed physician or dentist, requiring substantial specialized judgement and skill and based on knowledge and application of principles of biological, physical, and social science. The foregoing shall not be deemed to include acts of diagnosis or prescription of therapeutic or corrective measures.
2. The practice of practical nursing means the performance for compensation of selected acts in the care of the ill, injured, or infirm under the direction of a registered professional nurse or a licensed physician or a licensed dentist, and not requiring the substantial specialized skill, judgement, and knowledge required in professional nursing.

There must be a clear definition and job description for each category of employees. Realizing that nursing deals intimately with human beings, its functions must be controlled by the authority that regulate all human activity i.e., the law. A nurse will not be able to understand the legal implications unless she has full knowledge of :

- (i) The laws that directly pertain to the nurse
- (ii) Hazards of modern nursing
- (iii) Limitation of practice
- (iv) Her relationship to the patient, the physician, and the hospital
- (v) Her own duties and responsibilities to protect the institution from legal implication, and
- (vi) The reasons for revocation of nurses' licenses, and who really has the power to revoke.

Legal Responsibility

Nurse must make all possible efforts to lessen all the chances of being negligent. She should know that the Nurse's responsibility rests with herself. She can be held doubly responsible for injuries caused as a result of her negligence or her failure to give proper nursing care in a given situation. Therefore, she should :

- (a) Take every precaution in preventing an unconscious or irrational patient from injuring himself
- (b) Make accurate recording on patients record sheet, including his symptoms, changes in his condition, effects of treatments and medication
- (c) Know that the patient's chart is a legal document and not a public property
- (d) Inspect all equipment and make sure that they meet the accepted standard. Should not risk herself by using equipment which is not in proper working order
- (e) Never give any medicine to the patient unless its action and toxic effects are known
- (f) Never give any medicine that she herself has not poured
- (g) Not let her own confidence betray her. If any procedure results in an injury, she will be liable for an action of malpractice. Never do any treatment for the first time without supervision
- (h) Ignorance is no excuse. All professional people are legally required to keep abreast with current advances.
- (i) Be responsible for carrying out written orders from the physician and if in doubt, she has a right to make sure by asking the physician, or by referring the matter to her immediate authority. (e.g. No physician can order a professional nurse to perform a medical act such as induce an abortion.)

Areas of Practice

Due to rapid advancement in scientific technologies and medical sciences traditional areas in medical and nursing practice are changing. New roles and responsibilities are always appearing, creating problems in patient care situation. Whenever it is required to set up a new procedure to meet the required conditions each agency or institution is responsible for setting it up in a way that will avoid the added risk to the nurses' responsibility. A joint committee will be required to set up and co-ordinate such programme and make final decisions for its practice. Each criteria must be determined and all policies of further responsibility resting on the nurse and other personnel must be clearly defined and stated. For such shifting responsibilities the nurse receive adequate preparation and education beyond her basic programme of education. This joint committee should be able to review any changes and development at stated intervals.

Limitations

A complete definition of a practice of professional nursing has already been stated. Further, the nurse must be aware of the fact that there is a line between the practice of professional nursing and other auxiliary personnel and physicians and surgeons.

DEFINITION OF PRACTICE OF MEDICINE AND SURGERY

It includes examination or diagnosing for a fee or compensation of any kind, or prescribing, advising, recommending, administering or dispensing for a fee of any kind, directly or indirectly, a drug or medicine, appliance, application, operation or treatment of whatever nature for the care and relief of a wound, fracture, or bodily injury, infirmity or disease.

However, the professional nurse must learn that despite having quite a thorough knowledge of her patient's condition she is not authorized or prepared in comparison to a physician to advise, diagnose, prescribe or treat a patient. Certain nursing duties which are not performed under the specific orders of the doctor constitute the practice of nursing.

Nursing Diagnosis

Nursing diagnosis is nursing evaluation of the patient. June S. Rothberg in her "Why Nursing Diagnosis", maintains that "Nursing diagnosis is essential to nursing profession. It insures focus on the individual. It reveals the many factors which influence the patient's progress. And it results in a goal directed plan of nursing care that can be evaluated."

So, in making nursing diagnosis the professional nurses will have to get the answer to some essential questions, i.e. how, what and why are we evaluating? The purpose of such assessment will be to determine the need of the patient and his family, so that appropriate nursing assistance may be given. Hence, while making nursing diagnosis she will select appropriate methods, resources and personnel to meet the identified need in order to reach the goal for patient's care. However, nurses must use their best judgement and discretion while presenting their nursing evaluation.

The Law and Practice

There are established rules to regulate and control the teaching and practice of nursing. Governing bodies prescribe penalties for violation of such rules. These rules are established in the interest of the public and the nurse. Both must be protected, and both need protection.

In many countries nurses cannot practice without getting a licence which is renewable every year. This licence gives a protection to the public from incompetent persons practicing. Practice of nursing by an unlicensed person is punishable.

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