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# Legal Issues in Long-Term Care Nursing



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## General Principle


- A law is the body of rules and regulations governing people’s behavior, as well as their relationships with others in society



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## The Board of Nursing


- Jurisdictional governmental agencies in the 50 states, the District of Columbia and four US territories that are responsible for the regulation of nursing practice
- Established to protect the public's health and welfare by overseeing and ensuring the safe practice of nursing



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## The Board of Nursing


- Achieve this mission by:
  - Outlining the standards for safe nursing care
  - Issuing licenses to practice nursing
  - Monitoring licensees' compliance to jurisdictional laws; and,
  - Taking action against the licenses of those nurses who have exhibited unsafe nursing practice



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## Laws and Rules


- **Law – Nurse Practice Act**
  - Located in state’s revised code
  
- **Rules – Standards of Practice**
  - Located in state’s administrative code





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## Why Does it Matter to Me?

- Nurses are governed by their state specific Nurse Practice Act
- **Nurse Practice Act:**
  - Establishes a board of nursing (BON) with the authority to develop administrative rules or regulations to clarify or make the law more specific.
  - Rules and regulations must be consistent with the NPA and cannot go beyond it.
  - Rules and regulations undergo a process of public review before enactment.
    - Once enacted, rules and regulations have the full force and effect of law.
  - Changes periodically
    - Each nurse is responsible for being current with the laws that govern their scope of practice



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## Why Does it Matter to Me?

- Nurses must comply with the law and related rules in order to maintain their licenses
- The law describes the following:
  - Qualifications for licensure
  - Nursing titles that are allowed to be used
  - Scope of practice (what the nurse is allowed to do)
  - Actions that can or will happen if the nurse does not follow the nursing law

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## Why Does it Matter to Me?

- Nursing care includes the following:
  - Identifying patterns of human responses to actual or potential health problems amenable to a nursing regimen;
  - Executing a nursing regimen through the selection, performance, management, and evaluation of nursing actions;
  - Assessing health status for the purpose of providing nursing care;
  - Providing health counseling and health teaching;
  - Administering medications, treatments, and executing regimens authorized by an individual who is authorized to practice in this state and is acting within the course of the individual's professional practice;
  - Teaching, administering, supervising, delegating, and evaluating nursing practice.

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## Why Does it Matter to Me?


- With the ever-increasing number of litigation claims, nurses are at higher risk for being involved in a lawsuit



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## Torts

- A civil wrong committed against a person or property (real or personal) and is punishable by damages. Types include the following:
  - Unintentional torts: unintended, wrongful acts against another person that produces injury or harm
  - Intentional torts: willful or intentional act that violates another person's rights or property

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## Unintentional Torts

- Negligence
  - Involves harm resulting from the failure of an individual (nurse) to conduct themselves in a reasonable and prudent way, failure of a person to not perform an act (omission) or to perform an act (commission) that a reasonable person would or would not do in a similar situation
- Malpractice
  - Negligent acts of people with specialized education, including professional negligence that involves any misconduct or lack of skill in carrying out professional responsibilities

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## Legal Elements for Nursing Malpractice

- Duty, written or implied, to the patient must exist (standard of care);
- A breach of duty must occur (failure to perform what a reasonable and prudent professional would do under similar circumstances);
- Foreseeability of harm: the nurse must have had the knowledge or availability of information that not meeting the standard of care could result in harm;
- A proximate cause or causal connection must exist (provable correlation between the improper care and injury to the patient); and,
- Actual harm or damages must be suffered by the plaintiff (must be more than transitory).

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## Intentional Torts

- Assault
  - Causing of an apprehension of an immediate harmful, offensive or unauthorized contact to a person and a willful attempt or threat to injure
- Battery
  - Harmful, offensive or unauthorized touching of another person
- False imprisonment
  - Willful detention without consent or authority of law, keeping someone confined, preventing someone from leaving AMA

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## Intentional Torts

- Invasion of privacy
  - Violation of a person's right to make personal choices without interference and to not be subjected to uninvited publicity
- Disclosure of Information
  - Occurs when a resident's problems and/or personal information are inappropriately discussed with any third party
  - Violation of HIPAA
- Defamation
  - An act of communication that causes someone to be shamed, ridiculed, held in contempt, lowered in the estimation of the community, or to lose employment status or earnings or otherwise suffer a damaged reputation

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## Intentional Torts

- **Misrepresentation and fraud**
  - Occurs when a health professional misleads a resident to prevent discovery of a mistake in treatment
- **Infliction of mental and/or emotional distress**
  - Intentional conduct which results in a mental reaction
  - This includes mental suffering resulting from painful emotions such as grief, public humiliation, despair, shame, etc.

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## Nursing Liability and Professional Negligence

- **Professional liability**
  - Historically, physicians were held liable for nursing care
  - As nurses have gained authority, autonomy, and accountability, they have assumed responsibility, accountability, and liability for their own practice
  - Because of the enhanced role of nurses and an increase in the number of insured nurses, the number of liability suits seeking damages from nurses has increased dramatically!!
  - In all liability suits alleging malpractice, the plaintiff must prove negligence on the part of the professional

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## Common Allegations of Professional Negligence

- Failure to follow a physician's order
- Failure to report significant changes in condition
- Failure to ensure resident safety - falls
- Failure to report defective equipment
- Failure to follow established standard procedure
- Improper performance of treatment
- Failure to supervise care and services
- Contributing to medication errors
- Failure to convey discharge instructions
- Failure to follow policies and procedures
- Failure to properly delegate and supervise

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## Guidelines for Avoiding Torts

- Maintain current knowledge of the duties, responsibilities, and accountabilities for safe nursing practice
- Demonstrate competence and accountability in all areas of practice in which the nurse is engaged including:
  - Consistent performance of all aspects of nursing care; and
  - Recognition, referral or consultation, and intervention, when a complication arises
- Not falsify any client record or any other document prepared or utilized in the course of, or in conjunction with, nursing practice, including:
  - Case management documents or reports or time records, and other documents related to billing for nursing services

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## Guidelines for Avoiding Torts

- Notify the prescribing practitioner when the licensed nurse makes the decision not to follow the direction or administer the medication or treatment as prescribed;
- Document that the practitioner was notified of the decision not to follow the direction or administer the medication or treatment, including the reason for not doing so; and take any other action necessary to assure the safety of the client
- In an accurate and timely manner, report and document nursing assessments or observations, the care provided by the nurse for the client, and the client's response to that care
  - Change in condition

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## Guidelines for Avoiding Torts

- Maintain the confidentiality of patient information;
- Communicate patient information with other members of the health care team for health care purposes only;
- Access patient information only for purposes of patient care, or for otherwise fulfilling the nurse's assigned job responsibilities; and,
- NOT disseminate patient information for purposes other than patient care, or for otherwise fulfilling the nurse's assigned job responsibilities, through social media, texting, emailing or any other form of communication.

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## Guidelines for Avoiding Torts

- Provide privacy during examination or treatment and in the care of personal or bodily needs and treat each patient with courtesy, respect, and with full recognition of dignity and individuality
- Implement measures to promote a safe environment for each patient
- Delineate, establish, and maintain professional boundaries with each patient

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## Guidelines for Avoiding Torts

- Base your nursing care on the nursing process model
  - RNs: Assess, analyze, plan, implement, and evaluate
  - LPNs: Assessment participation through observation, planning, implementation, and evaluation
  - Comprehensively document every step of the nursing care plan and patient response:
    - Clear, concise and comprehensive documentation will support the nursing care you provide and help you defend your nursing license
  - Respect the patient's right to education based on his or her condition

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## Guidelines for Avoiding Torts


- Chart all discharge instructions in the medical record
- Know and adhere to your organization's policies and procedures
- Delegate wisely according to the rules of delegation



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## Nursing Delegation – What Is It?

- The process for a nurse to direct another person to perform nursing tasks and activities.

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# The Five Rights of Delegation

- Right task
- Right circumstance
- Right person
- Right supervision
- Right direction/communication

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**Board of Nursing**

**Nursing.Ohio.gov**  
Mike DeWine, Governor Jim Tressel, Lt. Governor Marlene Anielski, Executive Director

## RN and LPN Decision Making Model

Define/Describe the activity or task

Is the activity or task within the scope of practice of the nurse and NOT prohibited or precluded by any other law or rule?  
The Nurse Practice Act:  
[Section 4723.01 \(B\), ORC](#): practice as an RN  
[Section 4723.01 \(F\), ORC](#): practice as an LPN  
[Section 4723.43, ORC](#): practice as an AP-RN  
 Administrative Rules:  
[Chapters 4723-1 to 4723-27, OAC](#)  
 Review Other Applicable Laws or Rules:  
 Pharmacy Practice Act: [Chapter 4729, ORC](#)  
 Medical Practice Act: [Chapter 4731, ORC](#)

YES

Can the nurse perform the activity or task and meet the standards of safe nursing practice as defined in [Chapter 4723-4, OAC](#)?

YES

Is this activity or task safe and appropriate to perform with this patient at this time?

YES

The nurse may perform the activity/task according to acceptable and prevailing standards of safe nursing care and prepare to accept accountability for the nursing actions.

Activity/task **NOT** within scope and/or prohibited by law or rule

NO

NO

NO


**STOP**  
Do NOT perform the Activity or Task

8995 East Main Street Phone: 614 | 466-3947 Board@Nursing.Ohio.gov  
 Reynoldsburg, OH 43068 U.S.A. Fax: 614 | 466-0368 Nursing.Ohio.gov

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## Nursing Delegation – What Is It?


- **Summary of Nursing Delegation:**
  - A delegatee is allowed to perform a specific nursing activity, skill or procedure that is outside the traditional role and basic responsibilities of the delegatee’s current job.
  - The delegatee has obtained the additional education and training, and validated competence to perform the care/delegated responsibility.
    - The context and processes associated with competency validation will be different for each activity, skill or procedure being delegated. Competency validation should be specific to the knowledge and skill needed to safely perform the delegated responsibility as well as to the level of practitioner (i.e., RN, LPN/VN, AP) to whom the activity, skill or procedure has been delegated.
    - The licensed nurse who delegates the “responsibility” maintains overall accountability for the patient.
    - The delegatee bears the responsibility for the delegated activity, skill or procedure.

ANA NCSBN National Guidelines for Nursing Delegation April 1, 2019

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## Nursing Delegation – What Is It?


- **Summary of Nursing Delegation:**
  - The licensed nurse cannot delegate nursing judgment or any activity that will involve nursing judgment or critical decision making.
  - Nursing responsibilities are delegated by someone who has the authority to delegate.
  - The delegated responsibility is within the delegator’s scope of practice. A delegatee is allowed to perform a specific nursing activity, skill or procedure that is outside the traditional role and basic responsibilities of the delegatee’s current job.
  - When delegating to a licensed nurse, the delegated responsibility must be within the parameters of the delegatee’s authorized scope of practice under the NPA.
    - Regardless of how the state/jurisdiction defines delegation, as compared to assignment, appropriate delegation allows for transition of a responsibility in a safe and consistent manner.
  - Clinical reasoning, nursing judgement and critical decision making cannot be delegated.

ANA NCSBN National Guidelines for Nursing Delegation April 1, 2019

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## Guidelines for Avoiding Torts

- Treat all patients with competent, courteous care
- Treat patients and their families with respect and honesty
- Know the elements of intentional torts so you will not violate the patient's rights
- Remember, the first line of duty is to the patient!!

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## Failure to Notify Health Care Provider


- Resident's condition was assessed as worsening at 2:45 AM.
- The nurse called the attending physician several times to report deterioration, but was unable to make contact.
- Messages were left for the physician to call and periodically reassessed the resident condition.
- Nurse reached the physician at 3:45 AM and documented contact, assessment, and orders.
- Resident transfer to the hospital was necessary due to a delay in treatment according to daughter's claim.
- Daughter sued facility claiming that earlier contact with the physician would have alleviated the need to transfer out, and prevent her mother's pain and fear of being in unfamiliar places.
- In the deposition, the physician validated that he had had earlier calls from the nurse at 3:00 AM and 3:15 AM, but was unable to respond until 3:45 AM.
- Upon review of the charting, it was noted that any attempt to place earlier calls was absent in the documentation.

**Negligence or Not?**

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## Outcome

- The court did not believe the physician.
- The jury granted a large award and punitive damages due to lack of medical record documentation of the attempts to notify the physician at the onset of symptoms, despite the physician's deposition.
- Also stated documentation lacked a statement that the resident was stable enough to stay in the LTC facility when the physician was not available.
  - If the facility fails to document communication and harm (need to transfer out for care, pain, and emotional trauma) comes to the resident, the facility can be, and often, is held liable.

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## Failure to Follow Orders


- Resident suffered from chronic sinusitis and upper respiratory infections. When in the acute phase, she experienced excruciating pain and her physician orders and care plan stated that she was to receive an opioid analgesic every four hours whenever necessary and vital signs every four hours.
- At midnight, she informed the nurse that the pain medication she had received at 8:45 PM had provided no relief and requested more.
- The nurse took her vitals which were BP-102/60, P- 62, R-18 and administered the pain medication “a little early.” The nurse then recorded on the medication administration record that the medication had been given, but it was another half hour before she documented the blood pressure on the vital sheet. At that time, she noted that the 8:00 PM blood pressure had been 160/80 which was the norm for this resident.
- The nurse went to the resident’s room to check the resident and found that the resident was in full cardiorespiratory arrest.
- The resident was successfully resuscitated, but had a notable slowness in mental capacity following the incident.

**Negligence or Not?**

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## Outcome

- Nurse was named in the claim and settled with the family.
- The reason for the deviation in the standard of care was not addressed in the documentation nor was the physician contacted for the order change prior to administration.
  - If the nurse has a legitimate concern about the appropriateness of the physician’s order in meeting the resident’s need based on the nursing assessment, the physician is the only one who can adjust that order. The nurses thought processes, assessment findings, and physician contact must be documented to meet the standard.
- The standard used by the plaintiff attorney’s expert was that the nurse must know indications, contraindications, dosage parameters, and adverse reactions and monitor the resident for signs and symptoms of drug toxicity or other adverse reaction accordingly for all medications given to a resident. The record needs to contain nurse intervention and resident results.

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## When to File a Complaint

- A nurse's practice and behavior is expected to be safe, competent, ethical, and in compliance with applicable laws and rules
- If you believe there is a problem with a nurse, ask yourself if the nurse's practice and/or behavior is:
  - Unsafe
  - Incompetent
  - Unethical
  - Affected by the use of alcohol, drugs or other chemicals
  - Affected by a physical or mental condition
  - Is in violation of a nursing or nursing-related law or rule

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## Where to File a Complaint

- Any person who has knowledge of conduct by a licensed nurse that may violate a nursing law or rule or related state or federal law may report the alleged violation to the board of nursing where the conduct occurred. All jurisdictions have specific processes for complaint intake.

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## So, Remember

- The primary purpose of law and legislation is to protect the patient!
- Laws and legislation define the scope of acceptable practice and protect individual rights!
- Nurses who are AWARE of their rights and duties in legal matters are better able to protect themselves against liability or loss of professional licensure!



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*Thank you for coming!*

Phone: 877-699-3988 • E-Mail: [peggy.morrison@assuredpartners.com](mailto:peggy.morrison@assuredpartners.com)

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