

Unit 9
LEGAL AND ETHICAL RESPONSIBILITIES

LEGAL RESPONSIBILITIES

- ✘ Legal responsibilities are those that authorized or based on law.
- ✘ Law is a rule that must be followed.
- ✘ Laws are created and enforced by the federal, state, or local government.
- ✘ Health care workers must follow any laws that affect health care.

LEGAL RESPONSIBILITIES

- ✘ Health care professionals/workers are required to know and follow the state laws that regulate their respective licenses or registrations or set standards for their respective professions.
- ✘ Failure to meet your legal responsibilities can result in legal action against you and your employer.

CRIMINAL LAW

- ✘ Focuses on behavior known as crime
- ✘ Deals with wrongs against a person, property, or society
- ✘ Examples: practicing in a health profession without having the required license, illegal possession of drugs, misuse of narcotics, theft, sexual assault, and murder

CIVIL LAW

- ✘ Focuses on the legal relationships between people and protection of a person's rights
- ✘ A tort is a wrongful act that does not involve a contract.
 - + Civil wrong instead of a crime
 - + Occurs when a person is harmed or injured because a health care provider does not meet the established or expected standards of care
 - + Can lead to legal action

COMMON TORTS

- ✘ Malpractice = "bad practice"
- ✘ Commonly called professional negligence
- ✘ Failure of a professional to use the degree of skill and learning commonly expected in that individual's profession, resulting in injury, loss, or damage to the person receiving care
- ✘ Examples: a nurse performs minor surgery without having any training

COMMON TORTS

- ✘ Negligence – failure to give care that is normally expected of a person in a particular position, resulting in injury to another person
- ✘ Examples:
 - + Falls and injuries that occur when side rails are left down
 - + Using or not reporting defective equipment
 - + Infections caused by the use of nonsterile instruments and/or supplies
 - + Burns caused by improper heat or radiation treatments

COMMON TORTS

- ✘ Assault and battery (often used together)
- ✘ Assault – a threat or attempt to injure
- ✘ Battery – the unlawful touching of another person without consent
- ✘ Examples:
 - + Performing a procedure after a patient has refused to give permission
 - + Threatening a patient
 - + Improper handling or rough treatment of a patient while providing care

INFORMED CONSENT

- ✘ Patients must give consent for any care and they have right to refuse care.
- ✘ Written consent: surgery, diagnostic tests, experimental procedures, treatment of minors
- ✘ Verbal consent is also permitted in some cases
- ✘ Informed consent is permission granted voluntarily by a person who is of sound mind after the procedure and all risks involved have been explained in terms the person can understand

COMMON TORTS

- ✘ Invasion of property-unnecessarily exposing an individual or revealing personal information about an individual without the person's consent.
- ✘ Examples:
 - + Improperly draping or covering a patient during a procedure so that other patients or personnel can see the patient exposed
 - + Sending information regarding a patient to an insurance company without the patient's written permission
 - + Informing the news media of a patient's condition without the patient's permission

COMMON TORTS

- ✘ False imprisonment – restraining an individual or restricting an individual's freedom.
- ✘ Examples:
 - + keeping patients hospitalized against their will
 - + Applying physical restraints without proper authorization or with no justification
- ✘ Patients have the right to leave a hospital or health care facility without a physician's permission
- ✘ Usually the patient is asked to sign an AMA (Against Medical Advice) form

COMMON TORTS

- ✘ Abuse – any care that results in physical harm, pain, or mental anguish
- ✘ Physical Abuse
 - + Hitting, forcing people against their will, restraining movement, depriving people of food or water, and/or not providing physical care
- ✘ Verbal abuse
 - + Speaking harshly, swearing or shouting, using inappropriate words to describe a person's race or nationality, and/or writing threats or abusive statements
- ✘ Psychological abuse
 - + Threatening harm, denying rights; belittling, intimidating, or ridiculing the person; and/or threatening to reveal information about the person
- ✘ Sexual abuse
 - + Any unwanted sexual touching or act, using sexual gestures, and/or suggesting sexual behavior

ABUSE THAT COULD OCCUR BEFORE ENTERING A HEALTH CARE FACILITY

- ✘ Domestic abuse – occurs when an intimate partner uses threatening, manipulative, aggressive, or violent behavior to maintain power and control over another person
- ✘ Child abuse – abuse directed at a child
- ✘ Elder abuse – abuse directed at an older person

SIGNS AND SYMPTOMS OF ABUSE

- ✘ Unexplained bruises, fractures, burns, or injuries
- ✘ Signs of neglect such as poor personal hygiene
- ✘ Irrational fears or a change in personality
- ✘ Aggressive or withdrawn behavior
- ✘ Patient statements that indicate abuse or neglect

DEFAMATION

- ✘ False statements that either cause a person to be ridiculed or damage the person's reputation
- ✘ Incorrect information given out in error can result in defamation
- ✘ Slander – spoken information
- ✘ Libel – written information
- ✘ Examples:
 - + reporting that a patient has an infectious disease to a government agency when laboratory results are inaccurate
 - + Telling others that a person has a drug problem when another medical condition actually exists
 - + Saying a co-worker is incompetent

CONTRACTS

- ✘ An agreement between two or more parties
- ✘ Offer
 - + A competent individual enters into a relationship with a health care provider and offers to be a patient
- ✘ Acceptance
 - + The health care provider gives an appointment or examines or treats the patient
- ✘ Consideration
 - + The payment made by the patient for the services provided

IMPLIED OR EXPRESSED CONTRACTS

- ✘ Implied contracts – obligations that are understood without verbally expressed terms
- ✘ Example: when a qualified health care worker prepares a medication and a patient takes the medication – it is implied that the patient accepts this treatment

IMPLIED OR EXPRESSED CONTRACTS

- ✘ Expressed contracts – are state in distinct and clear language, either orally or in writing.
- ✘ Example: a surgery - all risks associated with treatment must be explained completely to the patient

LEGAL DISABILITY

- ✘ All parties entering into a contract must be free of legal disability
- ✘ A person who has a legal disability does not have the legal capacity to form a contract.
- ✘ Examples:
 - + Minors
 - + Mentally incompetent person
 - + Individuals under the influence of drugs that later the mental state
 - + Semiconscious or unconscious people

CONTRACT REQUIREMENTS

- ✘ Standards of care be provided by competent, qualified individuals
- ✘ May need to use a interpreter/translator
- ✘ Breach of contract
 - + Failure to provide care and/or giving improper care on the part of the health provider
 - + Failure on the part of the patient to pay according to the consideration

PRIVILEGED COMMUNICATION

- ✘ Comprise all information given to health care personnel by a patient
- ✘ By law this information must be kept confidential and shared only with other members of the patient's health care team
- ✘ Cannot be shared without written consent
 - + What information; to whom; by when
- ✘ Exempted from the law:
 - + Births and deaths
 - + Injuries caused by violence (such as assault and battery, abuse, stabbings) that may involve police
 - + Drug abuse
 - + Communicable diseases
 - + Sexually transmitted disease

HEALTH CARE RECORDS

- ✘ Privileged communications
- ✘ Belong to health care provider
- ✘ Patient has a right to obtain a copy of any information in the record
- ✘ Can be legal records in a court of law
- ✘ Erasures are not allowed on records
- ✘ Errors are to be crossed out with a single line so material is still readable and correct information inserted
- ✘ Must be maintained, kept confidential and retained for the amount of time required by state law
 - + Nebraska state is 10 years
 - + Most hospitals and clinics keep them on permanent file

HIPAA REVIEW

- ✘ Privacy rule went in effect in 2003
- ✘ Provide federal protection for privacy of health information in all states
- ✘ Requires every health care provider to inform patients about how their health information is used
- ✘ Patients must sing a consent form ascertaining that they have received the information before any health care provider can use the health information for diagnosis, treatment, billing, insurance claims, or quality care assessments

HIPAA REVIEW

- ✘ Patients must sing an authorization form for the release of information to other health care providers, attorney, insurance company, federal or state agency, and even family members
- ✘ Form must identify the purpose or need for the information, the extent of the information that may be released, and limits on the release of information, date of authorization and signature of the person authorized to give consent

HIPAA REQUIREMENTS FOR PATIENTS

- ✘ Be able to see and obtain copies of their medical records
- ✘ Be given information by health care providers about how they use medical information
- ✘ Be allowed to set limits on how personal health information is used
- ✘ Be permitted to request that health care providers take reasonable care to keep communications confidential
- ✘ Be given the right to state who has access to their information and limit providing information to their family if they choose
- ✘ Be provided with information on how to file a complaint against a health care provider who violates the privacy act

LEGAL RESPONSIBILITY

- ✘ When you are hired in a health agency it is your responsibility to learn exactly what you are legally permitted to do and to familiarize yourself with your exact responsibilities.
