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Nursing Law and Liability

Chapter Nine

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Topics for today:

- Sources of Law
- Divisions of Law
- Good Samaritan Act
- Issues in Health-Care Litigation
- Preventing Lawsuits


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Sources of Law

- Statutory Law:
 - written and enacted by the US Congress, state legislatures & other government entities
 - laws that govern the profession of nursing are mostly written at the state level, because licensure is a state issue
 - include the Nurse Practice Act- it enables the state boards of nursing, individual licensure procedures and schedule of fees for the state


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Sources of Law

- Common Law:
 - evolved from decisions of previous legal cases that form a *precedent* (to precede = to come before)
- Include laws involving negligence or malpractice for nurses


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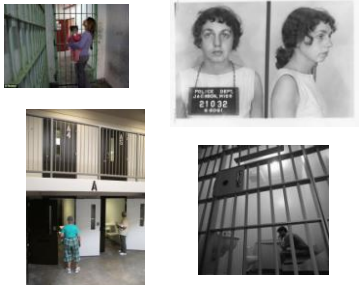


Divisions of Law- Criminal


- Criminal Law:
 - concerned with providing protection for all members of society
 - punishment is to fit the crime
 - nurses:
 - : failing to renew license
 - : illegal diversion of drugs
 - : assisted suicide
 - : intentional/ unintentional deaths

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Divisions of Law- Civil

- Civil Law:
 - violation of one individual's rights by another individual
 - tort law*: branch involving most nurses
 - tort*: wrongful act committed against a person or his/ her property independent of a contract


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Unintentional Tort

- negligence: *omission* of something a reasonable and prudent person *would* do in a similar situation ("Prudence, be reasonable!")
 - or
 - commission* of something a reasonable person *would not* do in a similar situation ("What were you thinking?")
- malpractice is the type of negligence for which professionals can be sued. It indicates professional misconduct or unreasonable lack of skill in performing professional duties.

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Intentional Tort

- a willful act that violates another's rights or property. Has three requirements:
 - *the person *intended* to bring about the consequences,
 - *intended to interfere with someone's property
 - *was a substantial factor in bringing about the injury or consequence)

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Intentional Tort

- ❑ Assault- unjustifiable attempt to touch another or the threat of doing so
- ❑ Battery- harmful or unwarranted contact with another without consent
- ❑ False Imprisonment- a competent pt is confined/ restrained with the intent of preventing him from leaving the hospital (or use of threats or medications that interfere with ability to leave the facility)
- ❑ Abandonment of clients- breach of contract, can cause injury
- ❑ Intentional infliction of emotional distress

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Quasi-Intentional Tort

- mix of unintentional and intentional
- a voluntary act that causes injury or distress *without intent* to injure or cause distress
- usually involve situations of communication with violate a person's reputation, personal privacy or civil rights

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- Defamation of Character

*libel- written

*Slander- spoken




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-Invasion of Privacy-
violation of right to protect
against unreasonable &
unwarranted interference
with one's personal life

-Breach of Confidentiality
trust and confidence are
violated by public
revelation of confidential
communication without
client consent



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Good Samaritan

Good Samaritan Act
-protects healthcare
providers in emergency
situations *within the
scope of their
professional education!*
-what if you had to perform
a tracheostomy? What
would Prudence B.
Reasonable do?




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Dispute Forums:

- Lawsuits:
-please read over facing a lawsuit on
your own.
- Mediation:
-trying to find common ground
- Arbitration:
-neutral third party makes the decision


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Issues in Health-Care Litigation

- Informed consent- person performing the procedure is the one to get the consent. Informed means *informed!*
- Patient Self-Determination Act- all federally-funded institutions must inform clients of their right to prepare advanced directives (living will, medical durable power of attorney)
- DNR orders- needs a written order in the medical record


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Issues in Health-Care Litigation

- Standards of Care- what would a reasonable and prudent nurse do in the same situation
- The Nurse Practice Act- defines nursing and sets standards in each state
 - defines scope of practice, license requirements, IDs grounds for disciplinary actions, oversees the practice of nursing

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Preventing Lawsuits

- ✓ Medical documentation- complete, accurate, legible (thanks computers), no opinions, in chronological order, signed
- ✓ Establish rapport with clients
- ✓ Keep current on your nursing skills
- ✓ Have some knowledge of the client (be direct, problem-solving *with* the client, have client involved in own care, careful documentation if client is lawsuit prone)


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And don't forget to get professional liability insurance!



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See you next class.....

Please do our readings & bring thoughtful questions!

