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Nursing Law and Liability
Chapter Nine
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Nursing 50

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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
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

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
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

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.

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)
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

Quasi-Intentional Tort

- A 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

Defamation of Character

- Libel - written
- Slander - spoken
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

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?

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)
And don't forget to get professional liability insurance!

See you next class……
Please do our readings & bring thoughtful questions!