AREAS OF POTENTIAL LIABILITY IN NURSING

**Dr Sahar Adham Al- Obidie**

**2016-2017**

**Crimes and Torts**

A crime is an act committed in violation of public (criminal) law and punishable by a fine or imprisonment. A crime does *not* have to be intended in order to be a crime. For example, a nurse may accidentally give a client an additional and lethal dose of a narcotic to relieve discomfort.

**Crimes are classified as either felonies or misdemeanors.**

**A felony** : is a crime of a serious nature, such as murder, punishable by a term in prison. In some areas, second-degree murder is called manslaughter. A nurse who accidentally gives an additional and lethal dose of a narcotic can be accused of manslaughter.

Crimes are punished through criminal action by the state against an individual.

**A misdemeanor** is an offense of a less serious nature and is usually punishable by a fine or short-term jail sentence, or both. A nurse who slaps a client's face could be charged with a misdemeanor.

**A tort is a civil wrong committed against**

**a person or a person's property**.

Torts are usually litigated in court by civil action between individuals.

Tort almost always is based on fault, which is something that was done incorrectly

Torts may be classified as unintentional or intentional.

**Unintentional Torts**

Negligence and malpractice are examples of unintentional torts .

**Negligence is misconduct or practice that is below the standard expected of an ordinary, reasonable, and prudent person. Such conduct places another person at risk for harm.**

negligence involves extreme lack of knowledge, skill, or decision making that the person clearly should have known would put others at risk for harm.

**Malpractice is "professional negligence," that is, negligence that occurred while the person was performing as a professional**. Malpractice applies to physicians, dentists, lawyers, and generally includes nurses.

**Six elements must be present for a case of nursing malpractice to be proven:**

**1. Duty.** The nurse must have (or should have had) a relation­ship with the client that involves providing care and follow­ing an acceptable standard of care.

**2. Breach of duty**. There must be a standard of care that is expected in the specific situation but that the nurse did not observe.

**3. Foresee ability**. A link must exist between the nurse's act and the injury suffered.

**4. Causation.** It must be proved that the harm occurred as a direct result of the nurse's failure to follow the standard of care

**5. Harm or injury**. The client or plaintiff must some type of harm or injury (physical, financial, or emo­tional) as a result of the breach of duty owed the client. The plaintiff will be asked to document physical injury, medical costs, loss of wages, "pain and suffering," and any other damages.

**6. Damages.** If malpractice caused the injury, the nurse is held liable for damages that may be compensated. The goal of awarding damages is to assist the injured party to his or her original position so far as financially possible .

a client recently returned from surgery could cause the client to have a hemorrhage. Nurses always must check med­ications very carefully. Even after checking, the nurse is wise to recheck the medication order and the medication before ad­ministering it if the client states, for example, "I did not have a green pill before."

A relatively frequent malpractice action attributed to nurses is *burning a client.* Hot water bottles,

heating pads, and solutions that are too hot for application may cause burns. Elderly, com­atose, or diabetic people are particularly vulnerable to burns because of their decreased sensitivity to pain and temperature. Hot objects can burn these people before they notice it. A nurse may also be held negligent for leaving a client without taking precautions (giving warnings or providing protections), for ex­ample, when using a steam vaporizer.

Clients often fall accidentally, sometimes with resultant in­jury. Some falls can be prevented by elevating the side rails on

Intentional Torts

**Assault :** can be described as an at­tempt or threat to touch another person unjustifiably. Assault precedes

**Battery;** it is the act that causes the person to believe a battery is about to occur. For example. In nursing, a nurse who threat­ens a client with an injection after the client refuses to take the medication orally

Battery is the willful touching of a person (or the person's clothes or even something the person is carrying) that may or may not cause harm. To be actionable at law, however, the touching must be wrong in some way; for example, touching done without permission, that is embarrassing, or that causes injury. In the previous example, if the nurse followed through on the threat and gave the injection without the client's consent, the nurse would be committing battery. Liability applies even though the physician ordered the medication or the activity and even if the client benefits from the nurse's action.

False imprisonment accompanied by forceful restraint .

Although nurses may suggest under certain circumstances that a client remain in the hospital room or in bed, the client must not be detained against the client's will. As with assault or battery, client compe­tency is a factor in determining whether there is a case of false imprisonment or a situation of protecting a client from injury. To guide nurses in such dilemmas, agencies usually have clear policies regarding the application of restraints

**ETHICAL ISSUES**

Ethics is a branch of philosophy that deals with values of human conduct related to the rightness or wrongness of actions and to the goodness and badness of the motives and ends of such actions (King, 1984 )

**STEPS TO AVOID LIABILITY**

- Practice within the scope of state laws and nurse practice act.

- Collaborate with colleagues to determine the best course of action.

- Use established practice standards to guide decisions and actions.

- Always put the client's rights and welfare first. Develop effective interpersonal relationships with clients and families.

- Accurately and thoroughly document all assess­ment data, treatments, interventions, and evalu­ation of the client's response to care.

**Ethics** is a set of moral principles and a code for behavior that govern an individual's actions with other individuals and within society

**Morals** are the basic standards for what we consider

right and wrong. Morals or standards are often based on religious beliefs and, to some extent, social influence and group norms.

**Autonomy** refers to the person's right to self- -termination and independence.

**Beneficence** refers one's duty to benefit or to promote good for others.

“

**Justice** refers to fairness; that is, treating all people fairly equally without regard for social or economic status race, sex, marital status, religion, ethnicity, beliefs.

**Veracity** is the duty to be hones truthful.

**Fidelity** refers to the obligation to honor all duties and commitments of contracts.

**Nonmaleficence** is the requirement to do no harm to others either intentionally or unintentionally.

Ethical decision making in nursing

**think about such a case .**

a 15-year- old girl made national news when she ran away from home to avoid chemotherapy and radiation treatment sessions. she suffering from Hodgkin's lymphoma .she was suffering from nausea and fatigue as well as hair loss ,from the treatment. She stated" *I could not stand going to the hospital every week. I feel like the medication is killing me instead of helping*

**Ethical decision making model**

1. Gather data

2. Identify the ethical problem values and issues

3. Identify alternatives.

4. Select one alternative.

5. Evaluate the action

**Nursing Liability**

Nurses are responsible for providing safe, competent, legal, and ethical care to clients and families . Nurses are expected to meet standards of care, meaning the care that they provide to clients meets set expectations and is what any nurse in a similar situation would do. Standards of care are developed from professional standards

C**ode of ethics**

was adopted in 1950, . It has been revised several times by: The International Council of Nurses’ Code was revised in 1973 and again in 2000.

Web site: *http:/*www.nursingworld.org/ethics/chcode.htmand then clicking on “View the Code Online.”

**Includes the following area:**

**Nurses and People**

**Nurses and Practice**

**Nurse & Profession**

**Nurse & Co-workers**

**Nurses and Practice**

The nurse carries personal responsibility and accountability for nursing practice and for maintaining competence

by continual learning.

The nurse maintains a standard of personal health such that the ability to provide care is not compromised.

The nurse uses judgment regarding individual competence when accepting and delegating responsibilities.

The nurse at all times maintains standards of personal conduct that reflect well on the profession and enhance

public confidence.

The nurse, in providing care, ensures that use of technology and scientific advances are compatible with the

safety, dignity and rights of people.

**Nurses and People**

The nurse’s primary responsibility is to people requiring nursing care.

In providing care, the nurse promotes an environment in which the human rights, values, customs and spiritual

beliefs of the individual, family and community are respected.

The nurse ensures that the individual receives sufficient information on which to base consent for care and

related treatment.

The nurse holds in confidence personal information and uses judgment in sharing this information.

The nurse shares with society the responsibility for initiating and supporting action to meet the health and social needs of the public, in particular those of vulnerable populations.

The nurse also shares responsibility to sustain and protect the natural environment from depletion, pollution,

degradation and destruction.

**Nurses and the Profession**

The nurse assumes the major role in determining and implementing acceptable standards of clinical nursing

practice, management, research and education.

The nurse is active in developing a core of research-based professional knowledge.

The nurse, acting through the professional organization, participates in creating and maintaining equitable social

and economic working conditions in nursing.

**Nurses and Co-workers**

The nurse sustains a cooperative relationship with co-workers in nursing and other fields.

The nurse takes appropriate action to safeguard individuals when their care is endangered by a co-worker or any other person.