This PowerPoint file is a supplement to the video presentation. Some of the educational content of this program is not available solely through the PowerPoint file. Participants should use all materials to enhance the value of this continuing education program.

Standards of Nursing Practice:
Ethical/Legal Obligations and Protections

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Nursing I 35316
GOALS FOR TODAY

- Identify legal obligations imposed on each nurse under the Nursing Practice Act
- Discuss the factors required for safe delegation to unlicensed assistive personnel
- Describe the difference between legal and ethical obligations of a nurse
- Define the standards of nursing practice in Texas
- Discuss the legal protections afforded nurses who report certain conduct in good faith

Definitions

- Nursing Jurisprudence - that area of law which is comprised of all legal rules and principles affecting the practice of nursing
  - those laws (nursing practice acts) are typically within the functions of each state board of nursing
  - the state nursing boards license nurses based on those laws, and hold hearings regarding individual misconduct
  - all laws, rules, and regulations such as, Occupations Code, Administrative Code, Health and Safety Code, Education Code
  - legal principles and doctrines governing and regulating the practice of nursing
  - legal opinions and decisions of competent authority in cases involving nursing practice
Legal Definitions

• Statute - written law passed by a legislature on the state or federal level
  – statutes set forth general propositions of law that courts apply to specific situations
  – a statute may forbid a certain act, direct a certain act, make a declaration, or set forth governmental mechanisms to aid society

• Texas Administrative Code (TAC) - a compilation of all state agency rules in Texas
  • 16 titles in the TAC
  • each title represents a category and related agencies are assigned to the appropriate title

• Case Law - the law based on judicial opinions (including decisions that interpret statutes), as opposed to law based on statutes, regulations, or other sources; also refers to the collection of reported judicial decisions within a particular jurisdiction dealing with a specific issue or topic

Legal Definitions

• Position Statement - Board Position Statements do not have the force of law, but are a means of providing direction for nurses on issues of concern to the Board relevant to protection of the public

• Policy and Procedures - provide the framework within which an organization operates; they define what your organization does and how you do it
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How To Find The Law

- [http://www.capitol.state.tx.us/](http://www.capitol.state.tx.us/)
Patient Care-Related Standards

- Promote a safe environment
- Know rationale for and effects of medications and treatments
- Respect client privacy and confidentiality unless the law requires to disclose
- Correctly administer medications and treatments
- Accurately document and completely report:
  - client’s status, including signs and symptoms
  - nursing care rendered
  - providers’ orders
  - administration of medications and treatments
  - client responses
  - contacts with other healthcare team members concerning significant events regarding client’s status

Patient Care-Related Standards

- Promote and participate in education and counseling for patients and families
- Institute nursing interventions to stabilize a client’s condition and/or prevent complications
- Clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-efficacious, or contraindicated by consulting with the appropriate licensed provider and notifying the ordering provider when the nurse makes the decision not to administer the medication or treatment
- Implement measures to prevent exposure to infectious pathogens and communicable conditions

22 TAC§217.11
Nursing Profession Standards

- Know and follow the NPA, the BON Rules, and all laws and regulations affecting practice, including your policies

Nursing Profession Standards

- Ask for instruction and supervision as necessary
- Make a reasonable effort to obtain orientation/training for competency when encountering new equipment and technology or unfamiliar care situations
- Be responsible for continuing competence (CNE) in nursing practice and individual professional growth
- Know, recognize, and maintain professional boundaries of the nurse-client relationship
- Provide, without discrimination, nursing services regardless of the age, disability, economic status, gender, national origin, race, religion, health problems, or sexual orientation of the client served
- Collaborate with the client, members of the healthcare team and, when appropriate, the client’s significant other(s) in the interest of the client’s healthcare
- Supervise nursing care provided by others for whom the nurse is professionally responsible
Nursing Profession Standards

• Consult with, utilize, and make referrals to appropriate community agencies and healthcare resources to provide continuity of care
• Make assignments to others considering client safety and commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made
• Accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse’s educational preparation, experience, knowledge, and physical and emotional ability
• Notify the appropriate supervisor when leaving a nursing assignment
• Ensure the verification of current Texas licensure or other Compact State licensure privilege and credentials of personnel for whom the nurse is administratively responsible, when acting in the role of nurse administrator

22 TAC §217.11

Minimum Standards For LVNs

• LVN practice is a directed scope of nursing practice under the supervision of an RN, APRN, physician assistant, physician, podiatrist, or dentist. Supervision is the process of directing, guiding, and influencing the outcome of an individual’s performance of an activity
• The LVN shall assist in determining predictable healthcare needs of clients within healthcare settings and perform the following:
  – use a systematic approach to provide individualized, goal-directed nursing care by:
    • collecting data and performing focused nursing assessments
    • participating in the planning of nursing care needs for clients
    • participating in the development and modification of the comprehensive nursing care plan for assigned clients
    • implementing appropriate aspects of care within the LVN’s scope of practice
    • assisting in the evaluation of the client’s responses to nursing interventions and the identification of client needs
Minimum Standards For LVNs

- LVN practice is a directed scope of nursing practice under the supervision of an RN, APRN, physician assistant, physician, podiatrist, or dentist. Supervision is the process of directing, guiding, and influencing the outcome of an individual's performance of an activity.
- The LVN shall assist in determining predictable healthcare needs of clients within healthcare settings and perform the following:
  - assign specific tasks, activities, and functions to unlicensed personnel and shall maintain appropriate supervision of unlicensed personnel
  - may perform other acts that require education and training as prescribed by Board rules and policies commensurate with the licensed vocational nurse's experience, continuing education, and demonstrated licensed vocational nurse competencies

22 TAC§217.11

Minimum Standards For RNs

- The RN shall assist in the determination of healthcare needs of clients and perform the following:
  - use a systematic approach to provide individualized, goal-directed nursing care by:
    • performing comprehensive nursing assessments regarding the health status of the client
    • making nursing diagnoses that serve as the basis for the strategy of care
    • developing a plan of care based on the assessment and nursing diagnosis
    • implementing nursing care
    • evaluating the client's responses to nursing interventions
  - delegate tasks to unlicensed personnel in compliance with Chapter 224 and 225 of this title
Minimum Standards For APRNs

• Standards for a specific role and specialty of advanced practice nurse supersede standards for registered nurses where conflict between the standards, if any, exist

• In addition to complying with standards applicable to all nurses and standards specific to RNs, all APRNs should:
  – practice in an advanced nursing practice role and specialty in accordance with authorization granted under the Board Rule 221 relating to practicing in an advanced nursing practice role and standards set out in that chapter
  – prescribe medications in accordance with prescriptive authority granted under Board Rule 222 of and standards set out in that chapter and in compliance with state and federal laws and regulations relating to prescription of dangerous drugs and controlled substances

Obligation to Report

• A licensed nurse shall report (mandatory) another nurse:
  – who violates the NPA, and it contributes to the death or serious injury of a patient
  – whose practice is impaired by drug or alcohol dependency or abuse
  – who is engaged in abuse, exploitation, fraud, or violation of professional boundaries
  – who lacks knowledge, skill, judgment, or conscientiousness to the extent that they pose a risk of harm to a patient or another person, regardless of whether it is a single incident or pattern of behavior

Occ. Code§301.402
Exceptions to Reporting to the Board

- Exception to mandatory reporting includes minor incidents, meaning conduct by a nurse that may be a violation of the NPA or a Board rule but does not indicate the nurse’s continued practice poses a risk of harm to a patient or another person.
- Reporting an incident to the Peer Review Committee satisfies the nurse’s duty to report.
- Nurses may report other nurses who are impaired or suspected of being impaired by chemical dependency or mental illness to TPAPN unless the nurse committed a practice violation.

Examples of Things To Report

- Suspicions of a nurse who may be impaired due to drugs or alcohol.
- Commissions of abuse, neglect, fraud, or exploitation of any patient.
- Violations of professional boundaries.
- Remember: financial, sexual, emotional, physical, etc.
- Actions which indicate the nurse lacks the judgment or consciousness that continuing practice may result in harm to a client.
Board of Nursing Complaint
Process: Investigation to
Resolution

https://www.ncsbn.org/426.htm

What is the first thing you should do if a complaint is filed against you?
Get legal counsel!

Optional reporting - a nurse may in good faith report to an employer any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to a statutory, regulatory, or accreditation standard.
Optional reporting - a person may not suspend or terminate the employment of, or otherwise discipline, discriminate against, or retaliate against, a person who:

(1) reports in good faith under this section; or

(2) advises a nurse of the nurse’s right to report under this section

Occ. Code §301.4025

Limits of Liability and Anti-Retaliation

- Civil immunity - a person who in good faith reports information or takes action in connection with a peer assistance program is immune from civil liability for reporting the information or taking the action.

- Reporting immunity - a person who in good faith makes a report required or authorized under this subchapter, or a person who advises a nurse of the nurse’s right or obligation to report under this subchapter:
  (1) is immune from civil and criminal liability that, in the absence of the immunity, might result from making the report or giving the advice; and
  (2) may not be subjected to other retaliatory action as a result of making the report or giving the advice.
Limits of Liability and Anti-Retaliation

- Retaliatory action - a person may file a lawsuit against anyone who files a lawsuit against them for reporting under the laws just discussed to recover damages such as attorney's fees, and actual and punitive damages
- Other very valuable protections under the law as well as monetary penalties for any retaliation
- May even waive Sovereign Immunity and sue governmental agencies

Health & Safety Code §467.008 and Occ. Code §301.412-413

Fighting for Nurses Who Speak Up for Patients – ANA
The Winkler County Nurses’ Story

https://www.youtube.com/watch?v=6qTNWT_XFIY
Limited Liability for School District Employees

- Texas law affords teachers and other professional employees (including teacher aides, school nurses and student teachers) fairly strong immunity from liability for actions taken as part of their duties.
- Generally, an employee is immune from liability as long as he/she is:
  - on duty (excludes motor vehicle accident)
  - exercising judgment or discretion, AND
  - not using excessive force or being negligent in the discipline of students

Education Code 22.0511

Do I need my own liability insurance?

- While educators are usually covered by their school's liability policies, those policies will not cover alleged criminal actions, complaints before the Board and CPS investigations.
- They may also have exclusions for civil charges such as defamation of character or have policy limits lower than might be reasonable to expect for certain legal actions.
- Always consult an estate attorney if you have sizeable assets that could be reached in the event of a lawsuit.
Social Media

- No images of patients, regardless of whether they are identified by name
- No discussing patients or procedures
- No disparaging remarks about patients, co-workers, or employers
- For more detailed information go to Board of Nursing Position Statement 15.29
  https://www.bon.texas.gov/practice_bon_position_statements_content.asp#15.29

ETHICAL DILEMMAS IN NURSING

What to do? What to do?
What is the difference between a moral/ethical and legal duty?

- You see a child in your school who falls down in the hall. Do you have a moral or legal duty to check on his welfare?
- You are at the mall and you see that same child fall down. Do you have a moral OR a legal duty to check on his welfare?
- Natalie is a 3rd grader at National Elementary school. Her mother is a single parent and struggles to make ends meet but doesn’t qualify for no-cost lunches at school. Natalie brings her lunch to school and you notice that her mother always packs a sugary drink, a sandwich with processed meat products on white bread, and two kinds of snacks, usually Oreos and Cheetos.
- What, if anything, would you do after seeing this pattern?
- Would it matter if Natalie’s BMI was 13.5? What if it was 24?

What is the difference between a moral/ethical and legal duty?

- Janet’s mother is in and out of your office frequently because Janet (15 years old) is a diabetic. During one of her frequent visits, Janet's mother asks you about the HPV vaccine. She states that since Janet is not sexually active, she will wait to get her vaccinated for HPV.
- Unknown to Janet’s mother, Janet has come to your office crying about potentially being pregnant from an encounter with her 15-year-old boyfriend. What, if anything, do you tell Janet’s mother about the need for the HPV vaccine and why?
What is the difference between a moral/ethical and legal duty?

- Marty, a school nurse, grew up with a mother who refused to vaccinate any of her children. Marty was home-schooled and lived most of her life in California in a very liberal community whose members all shared her mother's philosophy about vaccines.
- Marty left California when she married her Marine husband and spent several years in Germany before coming back to the US and going to nursing school.
- Recently Marty has been following Jenny McCarthy's story about her child, vaccines, and autism. Marty soon found that she totally agreed with what Jenny was proclaiming about vaccines.
- One day, a parent whose child has autism, asked Marty if it was true that vaccines might have caused this to her boy and if she should continue to vaccinate her newborn.

What is the difference between a moral/ethical and legal duty?

- John has terminal lung cancer and is in the last stages of the disease and very close to death. His wife, Mary, has not accepted the diagnosis and believes there is a miracle that will save his life. Mary is not willing to accept that death is near. John has an advance directive that states he does not want to be put on life support.
- His physician has certified that he is terminal and therefore, under the law, he is a qualified patient with a directive to his physician. Mary tells the nursing staff that she expects that he will be intubated until “his lungs are stronger.”
- John is in a great deal of pain and saw his father die of lung cancer 10 years ago. He knows that there is no cure for his disease and that chemotherapy might prolong his life but also his suffering.
- He is a very proud and self-sufficient man who does not want to lose control of his bodily functions and be a burden to his wife and kids. He has asked his physician to let him go home and die. He wants him to prescribe medication that will make that happen.
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