

Nursing Jurisprudence

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Created July 2018, Expires July, 2020

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Purpose

The purpose of this course is to define the ethical principles and codes of ethics under which the nurse must practice nursing as well to outline issues of jurisprudence that apply to the field of nursing, including state and federal laws that impact nursing and healthcare.

Goals

Upon completion of this course, the nurse should be able to:

- Describe 7 ethical principles.
- Discuss the ANA and ICN Codes of Ethics for Nurses.
- Discuss Nurse Practice Acts and scope of practice.
- Discuss licensure and certification.
- List and describe 3 types of peer review.
- Describe 9 legal issues that apply to nurses.
- Discuss 5 issues associating with nursing boundaries.
- Discuss the main provisions of HIPAA, EMGALA, OSHA, PDSA, VPA and Good Samaritan laws and their impact on nursing.

Introduction

Ethics can be difficult to define because people's perceptions of ethical behavior are often tied to their personal belief systems, such as religious beliefs, but religious beliefs vary widely. Others may believe that ethical behavior consists of following the laws, but as history clearly shows, some laws (such as segregation laws) have been profoundly unethical. Ethical behavior is often considered that which is accepted by society as a whole, but again, history does not support that view. Some societies, for example, support female genital mutilation, and this is now considered by much of the world to be unethical.

Despite these difficulties, there are some clear ethical standards that apply to the field of nursing, and nurses are expected to adhere to a code of ethics in all provisions of care as well as in their personal and professional lives. In addition to ethical standards, nurses must be knowledgeable about the laws that impact not only their personal conduct but also the field of nursing as a whole.



Ethical principles:

Ethical principles are the basis of all nursing practice and provide a framework to help the nurse in ethical decision making. The primary **ethical principles** include:

- **Beneficence:** Acting for the good and welfare of others and including such attributes as kindness and charity.
- **Nonmaleficence:** Acting in such a way as to prevent harm to others or to inflict the minimal harm possible.
- **Autonomy:** Recognizing the individual's right to self-determination and decision-making.
- **Justice:** Acting in fairness to all individuals, treating others equally and showing all individuals the same degree of respect and concern.
- **Veracity:** Being truthful, trustworthy, and accurate in all interactions with others.
- **Fidelity:** Being loyal and faithful to individuals who place trust in the nurse.
- **Integrity:** Acting consistently with honesty and basing actions of moral standards.

Codes of ethics

Since the early days of the nursing profession, a concern with a code of ethics has been central to nursing practice to serve as a guide for incorporating ethical principles into practice. The "Nightingale Pledge," a modification of the Hippocratic Oath (5th to 6th century BC), was first developed in 1893 and named in honor of Florence Nightingale.

The "**Nightingale Pledge**" was modified in 1935 to slightly modernize the language (replacing *shall* with *will* and adding reference to aiding the

physician while widening the role of the nurse to include public health, “missioner of health”):

I solemnly pledge myself before God and in the presence of this assembly to pass my life in purity and to practise my profession faithfully.
I will abstain from whatever is deleterious and mischievous, and will not take or knowingly administer any harmful drug.
I will do all in my power to maintain and elevate the standard of my profession and will hold in confidence all personal matters committed to my keeping and all family affairs coming to my knowledge in the practice of my calling.
With loyalty will I aid the physician in his work, and as a missioner of health, I will dedicate myself to devoted service for human welfare

This “Nightingale Pledge” has been recited by nurses for generations as is or with some modification. However, a more formal code of ethics was not developed until 1950. The code of ethics developed by the American Nurses Association (ANA) is an evolution of earlier attempts to delineate ethical standards for nurses. Although ethical standards had been suggested earlier, they were not codified and ratified until 1950 by the ANA as *A Code for Professional Nurses*.

In 2001, the first substantive revision in 25 years was completed and included interpretive statements. The latest revision (2015) has resulted in the current *Code of Ethics for Nurses with Interpretive Statements* and more accurately reflects the reality of today’s nursing practice, across all settings and in a wide range of roles.

The **ANA Code of Ethics** serves to guide nurses in maintaining ethical standards and in ethical decision-making as well as outlining the obligations nurses have to patients and to the nursing profession. The provisions focus on the following:

1: Respect for human dignity: The nurse must show respect for the individual and consider multiple factors (belief systems, gender/sexual identification, values, right to self-determination, and support systems) when planning and providing care. The nurse ensures patients are fully informed and prepared to make decisions about their healthcare and to carry out advance health care planning.

2: Commitment to patients: The nurse must always remember that the primary responsibility is to the patient and should help to resolve conflicts that may occur between the patient and others and avoid conflicts of interest or breach of professional boundaries.

3: Protection of patients' rights: The nurse must be aware of legal and moral responsibilities related to the patients' rights to privacy and confidentiality (as outlined by HIPAA regulations) and participation in research.

4: Accountability: The nurse bears primary responsibility for the care of the patient and must practice in accordance to not only the *Code of Ethics* but also the state nurse practice act and any regulations or standards of care that apply to nursing and healthcare.

5: Professional growth: The nurse must strive always to promote health, safety and wellbeing of self and others. The nurse must, in all circumstances, maintain personal integrity and report violations of moral standards. The nurse has a right to refuse to participate in actions or decisions that are morally objectionable but cannot do so if this refusal is based on personal biases against others rather than legitimate moral concerns.

6: Improvement of healthcare environment: The nurse must recognize that some virtues are expected of nurses, including those associated with wisdom, honesty, and caring for others, and that the nurse has ethical obligations toward others. The nurse is also responsible for creating and sustaining a moral working environment.

7: Advancement of the profession: The nurse must contribute to the profession through practicing within accepted standards, engaging in scholarly activities, and carrying out or applying research while ensuring the rights of the patients are protected.

8: Health promotion efforts: The nurse recognizes that health is a universal right for all individuals and collaborates with others to ensure improvement in the general health and to reduce disparities. The nurse remains sensitive to cultural diversity and takes action against human rights violations, such as genocide, and other situations that may endanger human rights and access to care.

9: Participation in goals of the profession: The nurse must promote and share the values of the profession and take action to ensure that social justice is central to the profession of nursing and healthcare.

The International Council of Nurses, whose goal is to represent nurses throughout the world, also developed a code, which serves as the basis for nursing practice: *The ICN Code of Ethics for Nurses*, first adopted in 1953 and revised in 2012.

The ***ICN Code of Ethics*** focuses on four different elements: Nurses and

1. People: Those in need of care are the primary responsibility of the nurse, who must show respect for diversity and cultural difference, uphold the patients' rights to privacy and confidentiality, and promote social justice and professional values.

2. Practice: The nurse must practice responsibly and recognize accountability for actions, delegations, personal conduct, and provisions of care.

3. Profession: The nurse must uphold the values of the profession and promote the profession.

4. Coworkers: The nurse must demonstrate respect for colleagues and collaborate with them in the provision of care but must protect patients from negligent or impaired healthcare providers.

Additionally, codes of ethics have been developed specifically for some certifications and specialties within the field of nursing.

Nursing jurisprudence

Nursing jurisprudence is the application and interpretation of regulations, laws, and principles of law to the profession of nursing. Nursing is regulated by law because the practice of nursing exposes individuals to possible risk, especially if nurses are not adequately prepared for the practice of nursing. Therefore, nurses must meet various requirements in order to practice.

Nurse Practice Acts:

The primary force in jurisprudence is the Nurse Practice Act, which is the statutory law of each state and territory. The Nurse Practice Act may vary somewhat from one state/territory to another but generally includes:

- The composition and authority of the state/territory Board of Nursing, which implements and oversees the Nurse Practice Act.
- Conditions under which one is admitted into nursing practice, including education standards and nursing diplomas or degrees.
 - Scope of practice for all levels of nursing from nursing assistants to advance practice nurses, including titles and specific licensure.
 - Licensure requirements, including continuing education requirements and frequency of re-licensure.
- Grounds for disciplinary action against nurses and types of violations.
- Disciplinary procedures in the event of negligence, malpractice, abuse, or impairment. In some cases, special programs for impaired nurses





may be included in the Nurse Practice Act.

Scope of practice:

The basic scope of practice is the same for all registered nurses, and this includes the provision of care, administration of medications and treatment for which the nurse has been trained, and patient assessment. The scope of practice, as defined by the Nurse Practice Act and implemented by the Board of Nursing, includes the following:

- The level of nurse (AS, RN diploma, BSN, MSN, DON) and the various roles that the nurse may carry out.
- The functions, procedures, and responsibilities that the nurse is authorized to carry out by virtue of education, experience, licensure, and certification.

The scope of practice may be expanded through additional certification, educational advancement, and training.

Licensure:

The purpose of a nursing **license** is to set minimum qualifications required of entry level nurses in order to ensure safe and effective provision of nursing care to patients and to provide assurance to the general public that the nurse may practice within the boundaries established by the nurse's scope of practice.

Nurses who apply for initial licensure, renewal, or licensure by endorsement must apply to the Board of Nursing of the state/territory or states in which they practice. Requirements for licensure may vary somewhat from no continuing education needed to up to 30 hours, such as California, which requires 30 hours every 2 years. Some states may require specific courses for renewal, such as Florida, which requires courses in Prevention of Medical Errors, Florida Laws and Rules, Recognizing Impairment in the Workplace, Human Trafficking, Domestic Violence, and HIV/AIDS.

A nurse must ordinarily be licensed in each state in which the nurse practices. Some states (now about 30) belong to the enhanced multi-state Nurse Licensure Compact, which allows a nurse (RN, LVN/LPN but not APN) who lives in one of the compact states to apply for one multi-state license to practice in all of the compact states. However, the nurse must apply for separate licenses if working in non-compact states. The nurse must pass a criminal background check in order to receive the compact nursing license.

Certification:

Certification is based on having a nursing license and completion of specified periods of practice, specific educational requirements, and examination by national certification agencies, such as the Oncology Nursing Certification Corporation (ONCC), the American Association of Critical-Care Nurses (AACN), and the American Nurses Credentialing Center (ANCC).

Certifications verify nursing competence in specialized areas of nursing and may, in some cases, require a BSN or advanced practice degree and licensure. Almost 200 different nursing certifications are available, including Adult-Gerontology Primary Care Nurse (A-GNP), Certified Asthma Educator (AE-C), Advanced Forensic Nursing (AFN-BC), Certified Continence Care Nurse (CCN-AP), Stroke Certified Registered Nurse (SCRN), and Trauma Certified Registered Nurse (TCRN).

Peer review:

Peer review is evaluation by those at the same level of nursing. For example, an advanced practice nurse should be reviewed by another advanced practice nurse. Peer review may be carried out by an individual or a committee of peers. The committee may comprise nurses at various levels. Types of **peer review** include:

- **Routine:** Peer review is carried out as part of routine evaluation for the purpose of reviewing the quality of nursing and promoting collaboration among healthcare practitioners. Peer review processes may vary among different institutions and states but is a mandated part of Magnet® designation and is considered a component of shared governance.
- **Incident-based:** With incident-based review, the review is triggered by some type of adverse event of concern. While procedures may vary, usually the nurse who is to be reviewed receives notification prior to the peer review. The review process examines the incident in detail in order to determine the root causes of the incident and to prevent the same problems from recurring. In some cases, such as in Texas, the peer review committee has the authority to report a nurse to the Texas Board of Nursing but does not independently have the authority to discipline a nurse as that authority rests with the employer and/or the Board of Nursing. If a peer review committee is to include an attorney, the person being reviewed must be so notified and have the opportunity to bring an attorney.
- **Safe harbor:** This type of peer review is specific to Texas but may expand to other states or be utilized in some institutions. The individual nurse may initiate a peer review process if the nurse believes that an order or request may be in violation of the Nurse Practice Act of the state or standards of the Board of Nursing. Safe harbor review is a protection for the nurse against licensure action or employer retaliation.

Litigation:

Litigation may occur if a patient suffers or believe to have suffered adverse effects of negligent care. Litigation most often relates to specific types of failures on the part of nurses: failure to follow standards of care, failure to adequately communicate (to patient, physician, and other nurses), failure to adequately document (if it isn't documented, it wasn't done), failure to carry out appropriate assessment and monitoring of patients, and failure to delegate appropriately.

Litigation issues include:

1. **Duty to care:** Nurses must care for patients in accordance with appropriate standards of care. This duty to care occurs whenever a nurse-patient relationship is established. Any nurse who actually renders care to a patient, whether assigned to that patient or not, is expected to render reasonable care for the benefit of the patient. Duty to care includes appropriate assessment, notification of physician, and take necessary actions to ensure the patient's wellbeing. Failure to do so may result in criminal and/or civil penalties. The three elements of duty to care include:
 1. The nurse must possess the knowledge and skill expected of the average person in the profession.
 2. The nurse must apply professional knowledge and skills in accordance with reasonable and ordinary standards of practice.
 3. The nurse must exercise best judgment when applying knowledge and skills.
2. **Negligence:** With negligence, a duty to care is present and a breach in the standard of care occurs that results in some type of damage or injury to the patient. The four elements of negligence that are required for liability and a finding of malpractice include:
 1. Duty to care.
 2. Breach of duty (failure to act within accepted standards of care).
 3. Breach resulted in harm/injury.
 4. Compensation deserved for harm/injury.
3. **Negligence per se:** This type of negligence is related to statutory violations. For example, if a nurse fails to carry out actions required by statutes or regulations or violates statutes or regulations, and the patient suffers harm/injury as a result, the nurse may be found negligent. In some cases, negligence per se can occur if a nurse delegates inappropriately.
4. **Malpractice:** This type of negligence refers only to professionals (as anyone can be negligent). In many courts, the terms "negligence" and "malpractice" are often used interchangeably although there is this professional distinction.
5. **Wrongful death:** About 100,000 people die each year because of medical mistakes, most of which were preventable. A finding of wrongful death occurs if the courts find that negligence led directly to the death of a patient.
6. **Defamation:** If a nurse speaks (slander) or writes (liable) negative or derogatory statements about a patient and these statements are shared

with a third person, resulting in damage to the patient's reputation, these actions constitute defamation. If the patient is a public figure, then a finding of defamation requires that the statements be false or made with malice.

7. **Assault and battery:** Assault (an act that causes the patient to fear harmful or offensive contact, such as through threats) and battery (an act that results in actual direct harm/injury to a patient) are both intentional acts. Battery may involve illegally restraining a patient or preventing them from leaving, touching the patient inappropriately, and abusing the patient. In the case of surgeons, battery can include operating on the wrong body part. Assault and battery may be considered elements of malpractice, but are often treated as criminal offenses.
8. **Loss of consortium:** If a negligent act on the part of a nurse results in a negative effect on the patient's relationships with other, the nurse may be found responsible. Suits regarding loss of consortium are usually filed by the spouse or family members of the patient rather than the patient.
9. **Emotional distress:** If a negligent or intentional act is considered egregious or outrageous, the patient may make a claim of emotional distress.

Professional boundaries:

The nurse must always maintain professional boundaries with patients and colleagues to prevent misunderstandings and inappropriate relationships. Violations of professional boundaries may result in loss of employment and licensure and civil action, depending on the severity of violation.

Issues of **professional boundaries** include:

- **Receiving/Giving gifts:** The nurse should decline all personal gifts and should avoid giving personal gifts to patients because either can set up expectations about a relationship that are not realistic.
- **Coercing patients:** Forcing a patient to do something against the patient's will, such as have a treatment, or intimidating a patient into cooperating not only breaches professional boundaries but may be perceived as assault.
- **Showing favoritism:** Giving more attention to one patient than others or doing favors for a patient may indicate over-investment in

a patient and may develop dependence on the part of the patient. The nurse, who is a position of power and authority, should avoid beginning a personal relationship with a patient.

- **Sharing personal information:** The nurse must maintain a professional distance in terms of sharing and must avoid sharing personal information that one would normally share with family or friends, as the patient may believe this constitutes a more personal relationship than the nurse intended.
- **Using social media:** The nurse must always be familiar with the institution's policies about social media (Facebook, Twitter, blogs, email, Skype, YouTube, message boards) as they may be very restrictive in relation to what a nurse can post regarding employment. From a practical perspective, it is usually best to post NOTHING about work, the work environment, patients, or colleagues.

The patient's rights to privacy and confidentiality extend to social media, so if the nurse posts a picture or the name or condition of a patient, this is a violation of HIPAA. Posting negative comments about co-workers is not only unethical but may be construed as lateral violence and bullying.

Additionally, posting information that might suggest the nurse has questionable moral character, such as pictures or stories of engaging in promiscuous sexual activity, nudity, drinking, or drug taking, may result in loss of employment or even loss of license.

Laws and regulations that impact nursing

Health Insurance Portability and Accountability Act (1966)



HIPAA requires that healthcare providers protect the privacy and confidentiality of patients, preventing the sharing of any personal protected information (PPI) (including name, address, diagnosis). The law grants access of the patient to their own (or children's) medical records and health information and allows the patient to require changes in the records if there are errors present. The patient must be informed about how health information will be used or shared, and the patient can limit sharing.



HIPAA does, however, allow for sharing of information about child or elder abuse with the appropriate authorities. In limited situations, information about child (such as pregnancy or sexually-transmitted disease) may be shielded from parents.

HIPAA also includes privacy and security rules related to the medical record and electronic transmittal of information. The privacy rule protects all information recorded in the electronic or paper medical record as well as conversations that occur between the patient and healthcare providers. The security rule ensure that any information recorded or stored electronically is secure and can be accessed only by those authorized to do so.

The nurse must be aware that accessing the health record of a patient to whom the nurse is not assigned is unauthorized access and usually grounds for dismissal, and sharing information or gossiping about a patient with colleagues is a violation of the patient's privacy and confidentiality.

Emergency Medical Treatment and Active Labor Act (EMTALA)

EMTALA (1986) is part of the Consolidated Omnibus Budget Reconciliation Act (COBRA). EMTALA was passed to ensure that patients who cannot afford to pay for care still receive necessary treatment and applies to hospitals that receive payment from Medicare.

Any patient who seeks treatment in an emergency department must receive a medical screening exam (MSE) and, if in need of emergent treatment, must be provided that treatment until the patient's condition has stabilized.

Once the patient is stable, the patient can be transferred. If, however, the patient is in stable condition on admission, the hospital is not required to treat the patient beyond the MSE but may transfer the patient to another facility, such as a county hospital that provides care to the indigent.

EMTALA applies to pregnant women in labor as having contractions constitutes an unstable condition. The pregnant woman may be considered stable under the following circumstances:

- Infant and placenta were delivered.
- Contractions stop.
- Labor is determined by a physician to constitute “false labor” rather than actual labor.

Patients with no illness or injury, such as those requesting immunizations or those who experienced a sexual assault, do not require the MSE be performed and the facility is not obliged to treat the patient. However, patients brought to the ED by the police should undergo an MSE to determine if an emergent medical condition exists.

Occupational Safety and Health Act

OSHA (1970) establishes safety standards for employers and workers in the private sector. Employers are required to follow all safety standards, find and correct safety and health hazards, inform employees about those hazards, provide personal protective equipment (free of cost) to workers, keep records of work-associated injuries and illnesses, and report work-associated injuries to OSHA.

OSHA gives employees the right to have safe working conditions, receive appropriate information and training in regards to handling or working with hazards, file complaints against the workplace and request OSHA inspection, and to make reports and gain these rights without retaliation of the employer.

Note that workplace safety applies to not only environmental concerns but also includes violence or threats of violence, which are increasing concerns.

Patient Self Determination Act

The PSDA (1990) requires facilities and healthcare programs to inform patients of their right to make decisions, to inquire as to whether patients have executed advance directives, to document patients’ wishes related to medical care, to avoid discriminating against those with advance directives, and to provide educational programs to staff, patients, and the community regarding ethical issues associated with self-determination and advance directives.

Volunteer Protection Act (1997)

The federal VPA provides protection for volunteers, such as nurses, who provide services in non-profit organizations and government entities who are

not compensated, are properly licensed and/or certified, act within the scope of responsibility, and are not guilty of criminal or reckless misconduct, gross negligence, or indifference to the rights or safety of the harmed individual.

Note that individual states may have volunteer protection acts that provide even more protection, and some states have adopted the Uniform Emergency Volunteer Health Practitioners Act.

Good Samaritan Laws

GSLs are enacted by the individual states and may vary from one state to another and usually do not apply to people engaged in work for which they are compensated although some states extend protection to include businesses and nonprofit agencies responding to emergencies.

These laws provide protection for those who provide uncompensated assistance to those in need of emergent care, such as at the scene of an accident. While these laws may provide some protection for claims of ordinary negligence, they do not protect against claims of gross negligence or misconduct.

Conclusion

Ethical principles provide a framework for nurses to engage in ethical decision making. Ethical principles include beneficence, nonmaleficence, autonomy, justice, veracity, fidelity, and integrity. Additionally, nurse must carry out their duties in accordance with nursing codes of ethics, such as the *ANA Code of Ethics for Nurses* and the *ICN Code of Ethics for Nurses*. Issues that are part of nursing jurisprudence include:

- Nurse practice acts, scope of practice, licensure, certification, and peer review (routine, incident-based and safe harbor).
- Litigation issues include duty to care, negligence, negligence per se, malpractice, wrongful death, defamation, assault and battery, loss of consortium, and emotional distress.
- Issues of professional boundaries include receiving/giving gifts, coercing patients, showing favoritism, sharing personal information, and using social media.
- Laws and regulations that impact nursing include HIPAA, EMTALA, OSHA, PSDA, VPA, and GSLs.

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