Professional Roles in Nursing Practice

Legal and Ethical Principles and Values
Introduction

Professional nursing has expanded rapidly within the past few years to include increased expertise, specialization, autonomy, and accountability from both legal and ethical perspectives. Nurses must be informed of legal issues to stay current and within their scope of practice.
Professional Nursing Practice

Nurse Practice Act

The single most important piece of legislation for nursing because it affects all facets of nursing practice. It is the law within the state and state boards of nursing cannot grant exceptions, waive the act’s provisions, or expand practice outside the act’s specific provisions.
State Boards of Nursing

- Established by Nurse Practice Act

- Two main purposes
  - Ensure enforcement of the act by serving
    regulate those who come under its
    provisions and prevent those not
    addressed within the act from practicing
    nursing.
To protect the public, ensuring that those who present themselves as nurses are licensed to practice within the state.
The National Council of State Boards of Nursing serves to further ensure that individual state actions against a nurse’s license are recorded and enforced in all states in which the individual nurse holds licensure.
Grounds for Disciplinary Action

- Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing.
  - forgery or alteration
  - licensure exam
  - prescribing without prescriptive authority
Grounds for Disciplinary Action

- Is guilty of a crime or gross immorality
  - conviction for any crime
  - crossing boundaries

- Is unfit or incompetent by reason of
  negligence, habits, or other causes
  - negligence
  - gross negligence
  - physical and/or psychological impairment
Grounds for Disciplinary Action

- Is habitually intemperate or is addicted to the use of habit-forming drugs

- Is mentally incompetent
  - requires an order from a judge
Grounds for Disciplinary Action

- Is guilty of unprofessional conduct
  - failing to assess and evaluate or failing to intervene
  - failing to report or document
  - failing to make entries, destroying entries, making false entries
Grounds for Disciplinary Action

- Unprofessional conduct continued
  - unlawfully appropriating
  - failing to administer medications/
    treatments in a responsible manner
  - performing/attempting to perform
    procedures without training
Grounds for Disciplinary Action

- Unprofessional conduct continued
  - violating confidentiality
  - causing suffering, permitting or allowing physical or emotional injury
  - abandonment
  - failing to report violations to the board
  - inappropriate delegation
Grounds for Disciplinary Action

- Unprofessional conduct continued
  - failing to supervise
  - failing to conform to universal precautions
  - acts of dishonesty
  - failing to display insignia
Grounds for Disciplinary Action

- Has had a license, certificate, or registration revoked, suspended, or placed on probation or under disciplinary action in any jurisdiction

- Has voluntarily surrendered a license, certification, or registration and has not been reinstated in any jurisdiction
Grounds for Disciplinary Action

- Has willfully or repeatedly violated any of the provisions of this chapter
  - continue action after ASBN notice
  - disregard of License expiration date
  - false, incorrect, or misleading information regarding license status
  - practice outside of Scope of Practice
  - failure to follow Nurse Practice Act/
    rules and regulations
Negligence

Conduct that is lacking in care and typically concerns nonprofessionals. Many experts equate negligence with carelessness, a deviation from the standard of care that a reasonable and prudent professional nurse would deliver under similar circumstances.
Malpractice

Referred to as professional negligence, concerns professional actions and is the failure of a person with professional education and skills to act in a reasonable and prudent manner.
The following six elements must be presented to have a successful malpractice suit. All of these factors must be proven before the court will find liability against the nurse or institution.
Elements of Malpractice

- Duty owed the patient
  - Failure to monitor a patient’s response to treatment. The more difficult to prove is the nature of the duty, which involves the standard of care that represents the minimum requirements for acceptable practice.
Elements of Malpractice

- Breech of the duty of care owed the patient.
  - Once the standard of care is established, the breach or falling below the standard of care is easy to show.
Elements of Malpractice

- Foreseeability
  - Involves the concept that certain events may be reasonably expected to cause specific results. The nurse must have prior knowledge or information that failure to meet a standard of care may result in harm.
Elements of Malpractice

- **Causation**
  - The nurse’s actions or lack of actions directly caused the patient’s harm.

- **Injury**
  - The resultant injury must be physical, not merely psychological or transient.
Elements of Malpractice

- **Damages**
  - The injured party must be able to prove damages. They must prove financial harm.
Liability

- Personal liability – defines each person’s responsibility and accountability for individual actions or omissions.

- Vicarious liability – imputation of accountability upon one person or entity for the actions of another person; substituted or imputed liability.
Liability

- Corporate Liability – holds that the institution has the responsibility and accountability for maintaining an environment that ensures quality healthcare delivery for consumers.
Causes of Malpractice for Nurse Managers

Nurse managers are charged with maintaining a standard of competent nursing care within the institution.
Causes of Malpractice for Nurse Managers

- Delegation and Supervision

The nurse manager retains personal liability for the reasonable exercise of the delegation and supervision activities. The failure to delegate within acceptable standards of professional nursing practice may constitute malpractice.
Causes of Malpractice for Nurse Managers

Duty to Orient, Educate and Evaluate

Nurse managers are responsible for the daily evaluation of whether nurses are performing competent care. They must ensure that they promptly respond to all allegations of incompetent or questionable nursing care.
Cause for Malpractice for Nurse Managers

Failure to Warn

Newer area of potential liability for nurse managers that involves the responsibility to warn subsequent or potential employees of nurses’ incompetence or impairment.
Causes of Malpractice for Nurse Managers

- **Staffing issues**
  - Adequate numbers of staff members at a time of advancing patient acuity and limited resources. Nurse managers must do everything in her power to provide adequate staff, and if he/she is not able then they have legal duty to notify proper chain of command when understaffing endangers patient welfare.
Cause of Malpractice for Nurse Managers

- Floating staff from one unit to another. Must consider area of staff’s expertise and send to comparable unit.

- Temporary or agency staff to augment hospital staffing – should be given a brief but thorough orientation to institution policies and procedures, etc.
Protective and Reporting Laws

Ensures the safety or rights of specific classes of individuals. Most states have reporting laws for suspected child and older adult abuse and laws for reporting certain categories of diseases and injuries.
Informed Consent

The authorization by the patient or the patient’s legal representative to do something to the patient. Inherent in the doctrine of informed consent is the right of the patient to informed refusal. Patients must clearly understand the possible consequences of their refusal.
Legal capacity - the first requirement and is determined by age and competency. Competency involves the ability to understand the consequences of actions or the ability to handle personal affairs. Emancipated minors are minors seeking treatment for substance abuse, communicable diseases and pregnant minors.
Informed Consent Continued

- Voluntary action - means the patient was not coerced by fraud, duress, or deceit into allowing the procedure or treatment.

- Comprehension – the patients must be given sufficient information, in terms he or she can reasonable be expected to comprehend.
Privacy and Confidentiality

- The patients right to protection against unreasonable and unwarranted interference with the patient’s solitude, and the right to privacy of the medical record.

- HIPAA
Policies and Procedures

- Written policies and procedures are a requirement of JCAHO. These documents set standards for care for the institution and direct practice. They must be clearly stated, well delineated, and based on current practice. There must be a copy available to staff on each unit.
Ethics Theories

- Deontological Theories-from the Greek word “duty”, derived rules and norms for the duties that human beings owe one another by virtue of commitments made and roles assumed; has sometimes been subdivided into situational ethical theory.
Ethics Theories continued

- Teleological theories - from the Greek word “end”, derived norms and rules for conduct from the consequences of actions.

- Principlism - emerging theory of ethics that incorporates existing ethical principles and attempts to resolve conflicts by applying one or more of the ethical principles.
Professional Nursing Practice: Ethics

- Ethical Principles
  - Autonomy—personal freedom and the right to choose what will happen to one’s own person.
  - Beneficence—principle that states that the action one takes should promote good.
  - Nonmaleficence – states that one should do no harm.
Ethical principles continued

- **Veracity** - principle that compels the truth is told completely.

- **Justice** - principle that all persons should be treated equally and fairly.

- **Paternalism** – principle that allows one to make decisions for another.
Professional Nursing Practice: Ethics

- Ethical principles continued
  - Fidelity – keeping one’s promises or commitments.
  - Respect for others – the highest ethical principle, respect for others acknowledges the right of individuals to make decisions and live by those choices.
Ethical decision-making involves reflection on the following:

- who should make the choice
- possible options or courses of action
- available options
- consequences, both good and bad
- rules, obligations, and values that should direct choices
- desired goals or outcomes
Professional Nursing Practice: Ethics

- Ethical Decision-making cont’d.

Nurses need to combine all of these elements using an orderly, systematic and objective method. Ethical decision-making models assist in accomplishing this goal.
Professional Nursing Practice: Ethics

- MORAL Model for Ethical Decision Making

M – Massage the dilemma. Identify and define the issues in the dilemma. Consider the options of all the major players in the dilemma and their value systems. This includes patients, family members, nurses, physicians, clergy, and any other interdisciplinary healthcare members.
MORAL Model cont’d

O – Outline the options. Examine all the options, including those that are less realistic and conflicting. This stage is designed only for considering options and not for making a final decision.
MORAL Model cont’d

R – Resolve the dilemma. Review the issues and options, applying basic principles of ethics to each option. Decide the best option based on the views of all those concerned in the dilemma.
A – Act by applying the chosen option. This step is usually the most difficult because it requires actual implementation, whereas the previous steps allow only for dialogue and discussion.
Professional Nursing Practice: Ethics

- MORAL Model cont’d

L – Look back and evaluate the entire process, including the implementation. No process is complete without a thorough evaluation. Ensure that those involved are able to follow through on the final option. If not, a second decision may be required and the process must start again at the initial step.
Ethics committees

Provide structure and guidelines for potential problems and can provide short term and long term assistance. They also serve as open forums for discussion and function as true patient advocates by placing the patient at the core of the committee discussions.
Future Ethical Concerns for Nurses

- Autonomy and independent practice among nurses.
- Quality of care in home and community settings.
- Development of nurses as leaders in the healthcare delivery field.
- Patient’s refusal of healthcare
- Issues of death and dying
Future Ethical Concerns for Nurses

- Nurses’ ability to be patient advocates in today’s healthcare structure.
- The ability to perform competent, quality nursing care in a system that rewards only cost-saving measures and that employs increasingly fewer professional nurses.