Legal Responsibilities in Health Care

Shelley Westwood, RN, BSN
Bullitt Central HS
Introduction

• Every aspect of our life is governed by certain laws or legal responsibilities.
• Ex: traffic laws
• It is important for the health care worker to be aware of and follow legal regulations
• Protects worker, employer and safety and well-being of the patient
Objectives

- Define and differentiate between civil law and criminal law
- Define and cite examples of torts which occur in health care including:
  - Malpractice
  - Negligence
  - Assault & Battery
  - Invasion of privacy
Objectives (continued)

- False imprisonment
- Abuse
- Defamation of character
- Explain contract in the health care setting
- Discuss confidentiality in relationship to HIPAA guidelines
Legal Responsibilities

• Authorized or based on law
• Two types
  – Civil law
  – Criminal law
• Health care professionals are required to know and follow state laws regulating their license or registration
Civil Law

- Deals with legal relationships between people and protection of a person’s rights
- Health care mainly affected by civil law
- **Contracts**—a written or spoken agreement, especially one concerning employment, sales, or tenancy, that is intended to be enforceable by law.
- **Torts** — wrongful act that does not involve a contract
Criminal Law

- Dealing with wrongs against a person, property or society
  - Practicing without required license
  - Misuse of narcotics
  - Theft
  - Murder
Legalities in Healthcare

• Many of the wrong doings in health care are civil wrongs instead of crimes
• They can lead to legal action however
Malpractice

• Providing improper or unprofessional treatment or care
• Liability insurance is available to health care professionals to protect them in such events
• The cost, particularly for physicians has become a financial burden for the professional
• Some states have higher malpractice rates than others, prompting physicians to move to other states with lower rates
Negligence

- Failure to provide care that is normally expected of a person equally trained in that particular situation, resulting in injury to the patient
- **EX:**
  - Ordered side rails left down and patient falls from bed
  - Using or not reporting defective equipment that injures patient
  - Patient develops infection from poor sterile technique by the nurse
  - Patient burned from bath water that was too hot
- *Negligence by a healthcare provider is malpractice*
Assault & Battery

- **Assault** – threatening to injure
- **Battery** – unlawful touch of another without their consent
  - Patients must give consent
  - To avoid charges of battery, make sure consent is obtained for all procedures
  - They have the right to refuse care
Informed Consent

• Permission granted by a person of sound mind of legal age after the procedure and all risks have been explained in terms the patient understands

• Procedures requiring written consent:
  – Surgery
  – Invasive diagnostic tests
  – Treatment of minors
  – Siderail releases (if doctor order)
Verbal Consent

- Permission is granted after procedure has been explained to patient
  - Ex: giving an injection, taking a blood pressure, drawing blood for a lab test, starting an IV, performing physical exam
- Patient may withdraw consent at any time
- Never perform a procedure on a patient without consent
Invasion of Privacy

• Unnecessary exposure of an individual or revealing personal information about an individual without consent
  – Ex: Exposing a patient while transporting them to x-ray
  – Sending information to an insurance company without patient’s written permission
  – Informing press of patient’s condition without permission
False Imprisonment

- Restraining a patient or restricting their freedom
  - Ex: side rails without a doctor’s order and a patient’s permission
  - Placing resident in restraints without order or permission
  - Keeping patient hospitalized against their will
Abuse

• Any care that results in physical harm, pain, or mental anguish

• Types:

  • **Physical** – hitting, forcing persons against their will, restraining movements, depriving food or water

  • **Verbal** – speaking harshly, swearing or shouting, writing threats or abusive statements
Abuse - continued

- **Psychological** – threatening harm, denying rights, belittling, intimidating
- **Sexual** – any unwanted sexual touching or act, sexual gestures or suggested sexual behavior
Abuse Outside of Facility

- **Domestic** – intimate partner uses threatening, manipulative, aggressive, or violent behavior
- **Child** – abuse of a child
- **Elder** – abuse directed toward an older person (may be financial in nature)

- Health care workers are required by law to report any type of abuse to immediate supervisor
- Laws in all states require the reporting of any form of abuse to proper authorities
Defamation

- False statements which may damage a person’s reputation

- Two types:
  - **Slander** – information is spoken
    - Ex: stating a person has a drug problem when another medical problem exists
  - **Libel** – information is written
    - Ex: sending inaccurate lab results to a government agency
Contracts

- Agreement between two or more parties
- Three parts
  - **Offer** – competent individual enters into a relationship with health care provider and offers to be a patient
  - **Acceptance** – health care provider gives them an appointment or examines and treats the patient
  - **Consideration** – payment made by the patient for the physician’s services
Types of Contracts

- **Implied** – Obligations are understood without verbally expressed terms
  - Ex: nurse offers patient medication and patient takes medication
- **Expressed** – Stated in distinct and clear language, either orally or in writing
  - Ex: surgery permit
- All risks of the procedure or treatment must be explained in terms patient understands
Legal Disability

• Person does not have legal capacity to form a contract
  – Ex: Minors – under legal age
  – Mentally incompetent person
  – Under influence of drugs that alter mental status
  – Semiconscious or unconscious people
Breach of Contract

- Contract requires certain standards of care by competent, qualified individuals
- If contract not performed according to agreement, contract is breached
- Example:
  - Not paying for services rendered
  - Giving improper care
Policies & Procedures

• Health care workers must be familiar with their employer’s policies and procedures
• Policies are the guidelines that provide information about facility rules and regulations
• The policies may include:
  – Holiday and vacation policy
• Insurance and sick leave benefits
• All other information concerning the operation of that facility
• Procedures tell you how to complete tasks the way your employer want them done.
• There may be procedures for the following:
  – How to take a temperature
  – How to give an enema
  – How to fill out forms
  – How to package and wrap trays
Policies & Procedures (cont)

• These guidelines assure that the health care worker performs their jobs correctly
• Always follow your facility’s policies and procedures
• In this manner your are protecting patients, co-workers, your employer, and yourself
Confidential Information

• All information given to health personnel by a patient is considered privileged communication, and by law **must** be kept confidential.

• Health care records are also considered **privileged communication**.

• Discuss patient information only with immediate supervisor.

• Health care workers can be fined, sued, or lose their job for sharing any information about patients with others.
Confidential Information (cont)

• Do not discuss with:
  – Other patients
  – Relatives and friends of the patient
  – Visitors to the hospital
  – Representatives of news media
  – Fellow workers, except when in conference
  – Your own relatives and friends
Confidential Information

- Information cannot be told to anyone without written consent of the patient
- The consent should state the following:
  - What information is to be released
  - To whom the information is to be given
  - Any time limits
HIPAA

• Health Insurance Portability & Accountability Act of 1996 (HIPAA)
• Enacted August 21, 1996
• Required the secretary of the DHHS (Department of Health & Human Services) to publicize standards for the privacy of all health information
• The goal was to protect personal information while still allowing information to reach those needed to properly provide treatment to the patient
HIPAA (continued)

- Each health care provider must have certain policies in place to comply with these guidelines
- Employees must follow certain policies for all the health care information they encounter in the facility
- Each facility must make written policies available to all employees
Safeguards

• As a health care worker to comply with HIPAA here are some basic guidelines:
  – Protect the patient from exposure of the body
  – Knock and pause before entering a room
  – Draw curtains or close door when providing care
  – Leave while visitors are with the patient
Safeguards (continued)

- Do not listen when patients make phone calls

- Be aware of your surroundings and do not discuss a patient within areas others could overhear (elevators, cafeteria, hallways, parking lot, etc)
Information Exempt from Privileged

- Certain information is exempt by law and must be reported.
- This includes:
  - Births & deaths
  - Injuries caused by violence requiring police intervention (assault & battery, abuse, stabbings)
  - Drug abuse
  - Communicable diseases and STD’s
Health Care Records

- Belongs to the health care provider
- Patient has right to obtain copy of any information in record
- Can be a legal record in court of law
- Must be properly maintained, kept confidential and maintained for amount of time required by state
- When destroyed after time permits, must be burned or shredded to maintain confidentiality
Correcting Mistakes

• Do not erase or mark out mistakes made on patient records
• Cross out errors with one single line through the information
• Insert correct information, initial and date
Computer Security of Records

- To maintain confidentiality of computer records:
- Limit personnel who have access
- Use codes to prevent access to certain information
- Require passwords to access specific information on records
- Constantly monitor and evaluate computer use
- Make sure computer monitor is turned away from heavy traffic areas when accessing records
Scenario

- While working at the local health department, your best friend comes in for a pregnancy test. Her test is positive. How should you handle this situation?
Questions

• What is a tort? List some examples of torts involved in health care.
• What is the difference between slander and libel? How are they alike?
• What are the three parts of a contract?
• Name four parties that have legal disabilities
• Name four types of abuse and cite examples of each
• Name information exempt from privileged communication
• What is the purpose of HIPAA?
• How do you correct mistakes made on medical records?
• Who does the medical record belong to?
Summary

• This lesson has presented legal implications for the health care worker
• We learned that confidentiality is an important part of staying within the legal boundaries
• Standards vary state to state and facility to facility
• It is the health care workers responsibility to learn exactly what they are legally permitted to do and what their responsibilities are
• When health care workers perform duties within these boundaries, they help prevent medical & legal problems