Legal Issues in Nursing Practice

Prepared by, Dr Mohammad Barahemah
Introduction:

- The Primary purpose of the law and the legislations is to protect the patient and the nurse.

- Law and legislation define the scope of acceptable practice and protect individual rights.

- Nurses who are aware of their rights and duties in legal matter are better able to protect themselves against liability or loss of professional licensure.
Examples on illegal practice in Nursing

- Taking picture to the patient or his wound without his permission.
- Not reporting the medical errors that may or may not lead to patient harm.
- Disclose patient confidential information to the police.
- Disclose patient infection disease to the infectious agencies.
- Hiding the seriousness of the disease from the patient.
- Discuss patient’s condition with his family over the phone.
Source of the Medical Law in Jordan

- Jordanian Ministry of Health
- Ministry of Justice
- Nursing profession
- Jordanian Nursing Council
- Jordan Nursing & Midwife Council
The Ministry of Justice

قانون المساءلة الطبية

في التشريعات القضائية الأردنية لا يوجد قانون خاص بالمسألة الطبية أو الأخطاء الطبية في التشريعات القضائية الأردنية وإنما يطبق القضاء الأردني المبادئ العامة الواردة في قانون العقوبات فيما يتعلق بالعقوبة الجزائية المرتبطة على الخطأ الطبي والذي يندرج تحت بند التسبب بالوفاة والإيذاء عن غير قصد الواردة في المادة (343) والتي تنص على ما يلي: (من سبب موت أحد عن إهمال أو قلة احترام أو عن عدم مراوعة القوانين والأنظمة عوقب بالحبس من ستة أشهر إلى ثلاث سنوات).
قانون المسألة الطبية

وإذا كان هناك ادعاء بالحق الشخصي للمطالبة بالعطل والضرر الذي نجم عن الخطأ الطبي فيحكم القضاء الأردني بالتعويض المادي والمعنوي استناداً إلى أحكام القانون المدني حسب المواد (266) و(267) من القانون المدني والتي جاء فيهما: يقدر الضمان في جميع الأحوال بقدر ما لحق المضرور من ضرر وما فاته من كسب بشرط أن يكون ذلك نتيجة طبيعية لفعل الضار.
The Jordanian Ministry of Health

1. المهام والمسؤوليات العامة،
2. ترخيص المهن الطبية والصحية،
3. ترخيص المستشفيات والمراكز الصحية الخاصة،
4. الأمراض المعدية،
5. نواقل الأمراض وانتقال العدوى،
6. التطعيم والتثقيف.
يتولى المجلس في سبيل تحقيق أهدافه المهام والصلاحيات التالية:

1- وضع استراتيجية تنظيم المهنة وتطويرها.
2- اقتراح سياسة تعليم المهنة وتحديد أولوياته بما يتفق مع سياسة التعليم العالي.
3- اقتراح شروط اعتماد المستشفيات لمقاصد التدريب والاختصاص في المهنة بالتنسيق مع وزارة الصحة.
4- اعتماد المعايير والأسس اللازمة لرفع مستوى المهنة واقتراح التشريعات المتعلقة بمزاولتها.
5- اقتراح الأسس والشروط المتعلقة بالتعليم المستمر وبالاعتراف بشهادات الاختصاص في التمريض وذلك مع مراجعات أحكام التشريعات النافذة.

Prepared by, Dr Mohammad Barahemah
لقد أوضح نقابة الممرضين والقابلات في قانون النقابة وآداب المهنة واجبات الممرض تجاه المرضى، وبين أن هناك سلطة تدريبية من مهامها النظر في موضوع الخطا المهني والإخلال بواجبات المهنة، ومن صلاحيتها أن تقرر إجراءات تدريبية بحق الممرض تتراوح العقوبة بموجبها من الغرامة المالية إلى المنع النهائي من ممارسة المهنة وشطب اسم الممرض بعد إدانته من المحاكم المختصة.
Class discussions:

- Do you think we have enough laws that regulate the medical practice?

- Do you think it is necessary to establish medical liability laws in Jordan?

- Have you ever advice a friend or a family member to sue such doctor or medical institutions?
Types Of cases in law

- Criminal case: The individual face charge generally for crime committed against an individual or society.

- Civil case: One individual sue another for money to compensate for a perceived loss.

- Administrative case: if the nurse violates nursing standards, the nursing agency will seek some form of punishment.
Legal liability:

- In **law**, a person is legally liable when he/she is financially and legally responsible for something.

- Nurse is liable to provide the best medical practice to his patients.

- Managers are not held liable for all act of negligent, but they may held liable if they were negligent in supervising other negligent acts.
Unintentional and Intentional torts:

- Unintentional torts
  - Negligence
  - Professional negligence
  - Malpractice
Professional Negligence & Malpractice

- **Negligence** is a failure to exercise the care that a reasonably prudent person would exercise in like circumstances. In tort law, *negligence* applies to harm caused by carelessness, not intentional harm.

- **Malpractice** is a type of negligence; it is often called "professional negligence". It occurs when a licensed professional (like a nurse) fails to provide services as per the standards set by the governing body ("standard of care"), subsequently causing harm to the plaintiff.

- Cases of negligence or malpractice are filed usually in civil courts to get monetary compensation for mental or physical injuries caused.
Professional Negligence

- Five components:

  1- Duty to use due care (defined by standard of care)

- The care that should be given under the circumstances.

- Example, A nurse should give medication accurately, completely, and on time).
2- Breach of duty (failure to meet standard of care)

- Not giving the care that should be given under the circumstances.

- Example, A nurse fail to give medication accurately, completely, or on time.
3- Forseeability of harm

- The nurse must have reasonable access to information about whether the possibility of harm exists.

- Example, The drug handbook specifies that the wrong dosage or route may cause injury.
4- Causation

● Patient is harmed because proper care is not given.

● Example, Wrong dosage cause patient to have a convulsion.
5- Injury or harm

- A actual harm resulted to patient.

- Example, convulsion or other serious complication occur.
Intentional Torts

- Are legal wrongs committed against a person or property.

- **Assault**, conduct that makes a person fearful.

- **Battery**, intentional and wrongful physical contact.

- **False imprisonment**, physical or other form of restrain.

- **Defamation**, communication to third party false information that person’s reputation.
Practice question:

- Nurse N is working in the intermediate unit. While she was helping another nurse changing the bed for an old patient, she saw the other nurse physically abuse the patient.

- What nurse N suppose to do?
Selected Laws

- Informed consent
  - Client’s legal and ethical rights to be informed of, give permission for procedure, treatment
  - Includes: the procedure to be performed.
  - The risk involve.
  - The expected desire outcomes
  - Expected complications
Implied Consent: If the patient is unable to sign the consent but the treatment is immediately needed and is in the patient's best interest.

Express Consent: To convey in writing, by gesture, or verbally the agreement or permission of a patient to receive treatment.
Practice question:

- Mrs J is about to do radical mastectomy to her left breast. When you discussed the operation with the patient, she said that she is happy that they are not going to remove all of her left breast. Few minutes later, the doctor call you and ask to bring the patient to the OP room immediately.
Incident Report:

- Are record of unusual or unexpected incidence that occur in the course of a client treatment.
- The incidence report should provide enough information about the incidence or occurrence so that appropriate treatment can be given.
- Example, incidence report of patient fall.
INCIDENT REPORT FORMAT

To be completed by staff within 12 hours of incident/accident

Incident Date: ____________________ Incident Time: ____________________
Injured Person Name: ____________________
Address: ____________________
Phone Numbers: ____________________
Male/Female: ____________________ Date of Birth: ____________________

Details of incident:
________________________
________________________
________________________

Who was injured person? ____________________
Injury Type: ____________________

Does Injury require Hospital/Physician? Yes: ____________________ No: ____________________
Hospital Name: ____________________
Address: ____________________
Hospital Phone Numbers: ____________________
Injured person/Party Signature/Date: ____________________ / ____________________

Important Notes and Instructions:
________________________
________________________
________________________

Prepared By: ____________________ Date: ____________________
Name of Approved By: ____________________ Signature: ____________________
Nursing documentation:

- **HELPFUL HINTS REGARDING DOCUMENTATION**

- Are all entries clear?
- Are there grammatical or spelling errors?
- Are entries signed correctly?
- Are entries dated and timed?
- Is the chart free of erasures and other alterations?
- Are entries made in black ink?
- Are known allergies **highlighted**
Strategies to Prevent Incidents

- Maintain client safety
  - Falls
  - Mistaken identity

- Minimize risk of medication errors
  - Apply the Five Rights
    - Right drug
    - Right dose
    - Right client
    - Right route
    - Right time
Strategies to Prevent Incidents, continued

- Use effective communication
  - Helps decrease risk of bad outcomes
  - Attentive listening
  - Accurate documentation and reporting

- Professional liability insurance
  - Nurses should carry to manage personal financial risk
Strategies to reduce malpractice claims:

- Practice within the scope of nursing.
- Observe agency policies and procedures.
- Use evidence based practice.
- Always put patient rights first.
- Be aware of relevant laws and regulations.
- Practice within the area of individual competences.
- Upgrade your technical skills.
- Document all nursing activities.
Leadership Roles

- Serve as a role model.
- Update knowledge and skills.
- Report substandard nursing care.
- Foster nurse-patient relationship.
- Creates an environment that encourage culture diversity.
- Prioritize patient rights.
- Demonstrate vision, risk taking, and energy in determining the appropriate legal boundaries for nursing practice.
Management Role

- Increase knowledge about laws and legislation.
- Delegate to subordinate wisely.
- Understand to institution policies and procedures.
- Minimize the risk for product liability.
- Monitor subordinates for appropriate license to practice nursing.
- Increase the awareness on intentional torts.
- Provide educational and training about legal issues.
Summary

Keep in mind that practicing in a reasonable, professional manner and documenting your judgment and actions are the best defenses against litigation.