

LEGAL AND ETHICAL ASPECTS OF NURSING

DESCRIPTION:

This course contains two major sections- legal issues and ethical issues. The purpose of the legal portion of this course is to provide nurses with a thorough knowledge of state laws and rules that apply to nursing practice and nurses. The laws of Florida are detailed, however, this course is also helpful to nurses throughout the nation.

Knowledge about Florida's statutes, rules and the Florida Board of Nurses protects nurses and more importantly, it protects the public. The content includes information about the Florida State Nurse Practice Act, role differentiation among RNs, LPNs, and unlicensed personnel, such as nursing assistants, the roles and responsibilities of the Florida Board of Nursing, pertinent rules, continuing education mandates, disciplinary actions, the CNA Council, the Florida State Patient's Bill of Rights and Responsibilities, the Florida Center for Nursing, the Intervention Project for Nurses (IPN), and some basic legal principles associated with official records, documentation and delegation.

The second portion of this course on ethics provides the learner with an overview of various ethical principles; the evolution of ethical thought throughout history; ethics in healthcare and nursing; ethical dilemmas and ways to resolve them; commonly occurring and most recently encountered ethical issues in healthcare; and available resources that aid in the facilitation of ethical decision-making.

OBJECTIVES:

At the conclusion of this course, the learner will be able to:

1. Detail and apply the components of the Florida State Nurse Practice Act into one's role and responsibilities.
2. Differentiate among the legally permissible roles of the registered nurse, the licensed practical nurse and unlicensed staff, such as nursing assistants and patient care technicians.
3. Discuss the composition of and the roles associated with the Florida Board of Nursing.

4. Relate some of Florida's statutes and nursing rules associated with licensure, license renewal, continuing education, disciplinary actions, the CNA Council, and some initiatives, such as the *Florida State Patient's Bill of Rights and Responsibilities*, *Florida Center for Nursing* and the *Intervention Project for Nurses (IPN)*.
5. Apply basic legal principles to documentation and official records.
6. Apply basic legal principles to delegation and supervision.
7. Define and detail various ethical principles and concepts, such as autonomy, beneficence, nonmaleficence, and justice.
8. Relate the historical and current evolution of ethical thought including milestones, such as the Hippocratic oath and the American Nurses Association's Code of Ethics.
9. Articulate ways in which ethical dilemmas can be resolved and methods of ethical decision-making.
10. Detail some commonly occurring ethical issues and resources, including human resources that can be used to make ethical decisions.

INTRODUCTION TO NURSING LAW

"Ignorance of the law excuses no man; not that all men know the law, but because 't is an excuse every man will plead, and no man can tell how to refute him." (Selden 1584-1654; Bartlett & Dole, 2000).

Nursing is a profession that is, and should be, regulated by itself. Our professional associations and organizations, such as the American Nurses Association and the National Council of State Boards of Nursing regulate the profession and they also lobby for legal, or statutory, regulation in order to protect the public and to maintain the integrity of the profession. As a result of these and other efforts, all states in our nation have laws and regulations aimed to protect the healthcare consumer and to insure safe nursing practice.

Knowledge of, and adherence to, the law is an imperative professional responsibility. This course will provide you with many aspects of the law and how these laws impact your practice, however, it is up to you to periodically check with the State of Florida in order to know when laws and rules are changed and/or added. Ignorance of the law is not defensible.

THE FLORIDA STATE NURSE PRACTICE ACT

All states throughout the nation have their own nurse practice act. Generally speaking they are quite similar, although there may be some minor differences. These nurse practice acts, with few exceptions, include some basic definitions and some broad statements about nursing and its role.

Nurse practice acts generally define "professional nursing", "practical nursing" and "advanced practice", in addition to some other terms such as "nursing diagnosis" and "assessment". They differentiate between the roles of the professional nurse, or registered nurse, and that of the practical, or vocational, nurse. They do not list specific tasks or specific roles for each of the two types of nurses, but they do provide the framework with which these roles can be legally executed.

The protection of the public is the primary purpose of nurse practice acts. The protection of the public is also the primary goal of the state boards of nursing throughout our country.

Nurse practice acts guide our practice as nurses. These acts legally define and defend what we can and cannot do as a registered professional nurse or a licensed practical, or vocational, nurse. Additionally, these acts protect and guide those who delegate aspects of care to others. For example, a registered nurse who supervises others and delegates patient care to licensed practical nurses and nursing assistants, must apply the principles and guidelines found in the nurse practice act, in addition to other factors such as competency validation, when they are assigning care. A nursing supervisor, assigning the admission of a new patient, must be aware of the fact that licensed practical nurses and nursing assistants can participate in the admission procedures for this patient, but only the registered professional nurse, or RN, can analyze admission data to decide upon a nursing diagnosis. Legally, nurses must function within the limits of their scope of practice, as defined by their nurse practice act.

The Nurse Practice Act for the State of Florida is, as follows:

FLORIDA STATUTES CHAPTER 464

NURSING

PART I

NURSE PRACTICE ACT (ss. 464.001-464.027)

"(3)(a) "Practice of professional nursing" means the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological, physical, and social sciences which shall include, but not be limited to:

1. The observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the promotion of wellness, maintenance of health, and prevention of illness of others.
2. The administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments.
3. The supervision and teaching of other personnel in the theory and performance of any of the above acts.

(b) "Practice of practical nursing" means the performance of selected acts, including the administration of treatments and medications, in the care of the ill, injured, or infirm and the promotion of wellness, maintenance of health, and prevention of illness of others under the direction of a registered nurse, a licensed physician, a licensed osteopathic physician, a licensed podiatric physician, or a licensed dentist.

The professional nurse and the practical nurse shall be responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing.

(c) "Advanced or specialized nursing practice" means, in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the board which, by virtue of post basic specialized education, training, and experience, are proper to be performed by an advanced registered nurse practitioner. Within the context of advanced or specialized nursing practice, the advanced registered nurse practitioner may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The advanced registered nurse practitioner may also perform acts of medical diagnosis and treatment, prescription, and operation which are identified and approved by a joint committee composed of three members appointed by the Board of Nursing, two of whom shall be advanced registered nurse practitioners; three members appointed by the Board of Medicine, two of whom shall have had work experience with advanced registered nurse practitioners; and the secretary of the department or the secretary's designee. Each committee member appointed by a board shall be appointed to a term of 4 years unless a shorter term is required to establish or maintain staggered terms. The Board of Nursing shall adopt rules authorizing the performance of any such acts approved by the joint committee. Unless otherwise specified by the joint committee, such acts shall be performed under the

general supervision of a practitioner licensed under chapter 458, chapter 459, or chapter 466 within the framework of standing protocols which identify the medical acts to be performed and the conditions for their performance. The department may, by rule, require that a copy of the protocol be filed with the department along with the notice required by s. 458.348.

(d) "Nursing diagnosis" means the observation and evaluation of physical or mental conditions, behaviors, signs and symptoms of illness, and reactions to treatment and the determination as to whether such conditions, signs, symptoms, and reactions represent a deviation from normal.

(e) "Nursing treatment" means the establishment and implementation of a nursing regimen for the care and comfort of individuals, the prevention of illness, and the education, restoration, and maintenance of health.

(4) "Registered nurse" means any person licensed in this state to practice professional nursing.

(5) "Licensed practical nurse" means any person licensed in this state to practice practical nursing.

(6) "Advanced registered nurse practitioner" means any person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice.

(7) "Approved program" means a nursing program conducted in a school, college, or university which is approved by the board pursuant to s. 464.019 for the education of nurses."

FLORIDA STATE'S PATIENT'S BILL OF RIGHTS AND RESPONSIBILITIES (381.026)

“(1) SHORT TITLE.--This section may be cited as the "Florida Patient's Bill of Rights and Responsibilities."

(2) DEFINITIONS.--As used in this section and s. 381.0261, the term:

(a) "Department" means the Department of Health.

(b) "Health care facility" means a facility licensed under chapter 395.

(c) "Health care provider" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, or a podiatric physician licensed under chapter 461.

(d) "Responsible provider" means a health care provider who is primarily responsible for patient care in a health care facility or provider's office.

(3) PURPOSE.--It is the purpose of this section to promote the interests and well-being of the patients of health care providers and health care facilities and to promote better communication between the patient and the health care provider. It is the intent of the Legislature that health care providers understand their responsibility to give their patients a general understanding of the procedures to be performed on them and to provide information pertaining to their health care so that they may make decisions in an informed manner after considering the information relating to their condition, the available treatment alternatives, and substantial risks and hazards inherent in the treatments. It is the intent of the Legislature that patients have a general understanding of their responsibilities toward health care providers and health care facilities. It is the intent of the Legislature that the provision of such information to a patient eliminate potential misunderstandings between patients and health care providers. It is a public policy of the state that the interests of patients be recognized in a patient's bill of rights and responsibilities and that a health care facility or health care provider may not require a patient to waive his or her rights as a condition of treatment. This section shall not be used for any purpose in any civil or administrative action and neither expands nor limits any rights or remedies provided under any other law.

(4) RIGHTS OF PATIENTS.--Each health care facility or provider shall observe the following standards:

(a) *Individual dignity*.--

1. The individual dignity of a patient must be respected at all times and upon all occasions.

2. Every patient who is provided health care services retains certain rights to privacy, which must be respected without regard to the patient's economic status or source of payment for his or her care. The patient's rights to privacy must be respected to the extent consistent with providing adequate medical care to the patient and with the efficient administration of the health care facility or provider's office. However, this subparagraph does not preclude necessary and discreet discussion of a patient's case or examination by appropriate medical personnel.

3. A patient has the right to a prompt and reasonable response to a question or request. A health care facility shall respond in a reasonable manner to the request of a patient's health care provider for medical services to the patient. The health care facility shall also respond in a reasonable manner to the patient's request for other services customarily rendered by the health care facility to the extent such services do not require the approval of the patient's health care provider or are not inconsistent with the patient's treatment.

4. A patient in a health care facility has the right to retain and use personal clothing or possessions as space permits, unless for him or her to do so would infringe upon the right of another patient or is medically or programmatically contraindicated for documented medical, safety, or programmatic reasons.

(b) *Information.*--

1. A patient has the right to know the name, function, and qualifications of each health care provider who is providing medical services to the patient. A patient may request such information from his or her responsible provider or the health care facility in which he or she is receiving medical services.

2. A patient in a health care facility has the right to know what patient support services are available in the facility.

3. A patient has the right to be given by his or her health care provider information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis, unless it is medically inadvisable or impossible to give this information to the patient, in which case the information must be given to the patient's guardian or a person designated as the patient's representative. A patient has the right to refuse this information.

4. A patient has the right to refuse any treatment based on information required by this paragraph, except as otherwise provided by law. The responsible provider shall document any such refusal.

5. A patient in a health care facility has the right to know what facility rules and regulations apply to patient conduct.

6. A patient has the right to express grievances to a health care provider, a health care facility, or the appropriate state licensing agency regarding alleged violations of patients' rights. A patient has the right to know the health care provider's or health care facility's procedures for expressing a grievance.

7. A patient in a health care facility who does not speak English has the right to be provided an interpreter when receiving medical services if the facility has a person readily available who can interpret on behalf of the patient.

(c) *Financial information and disclosure.--*

1. A patient has the right to be given, upon request, by the responsible provider, his or her designee, or a representative of the health care facility full information and necessary counseling on the availability of known financial resources for the patient's health care.

2. A health care provider or a health care facility shall, upon request, disclose to each patient who is eligible for Medicare, in advance of treatment, whether the health care provider or the health care facility in which the patient is receiving medical services accepts assignment under Medicare reimbursement as payment in full for medical services and treatment rendered in the health care provider's office or health care facility.

3. A health care provider or a health care facility shall, upon request, furnish a patient, prior to provision of medical services, a reasonable estimate of charges for such services. Such reasonable estimate shall not preclude the health care provider or health care facility from exceeding the estimate or making additional charges based on changes in the patient's condition or treatment needs.

4. A patient has the right to receive a copy of an itemized bill upon request. A patient has a right to be given an explanation of charges upon request.

(d) *Access to health care.--*

1. A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment.

2. A patient has the right to treatment for any emergency medical condition that will deteriorate from failure to provide such treatment.

3. A patient has the right to access any mode of treatment that is, in his or her own judgment and the judgment of his or her health care practitioner, in the best interests of the patient, including complementary or alternative health care treatments, in accordance with the provisions of s. [456.41](#).

(e) *Experimental research.*--In addition to the provisions of s. [766.103](#), a patient has the right to know if medical treatment is for purposes of experimental research and to consent prior to participation in such experimental research. For any patient, regardless of ability to pay or source of payment for his or her care, participation must be a voluntary matter; and a patient has the right to refuse to participate. The patient's consent or refusal must be documented in the patient's care record.

(f) *Patient's knowledge of rights and responsibilities.*--In receiving health care, patients have the right to know what their rights and responsibilities are.

(5) RESPONSIBILITIES OF PATIENTS.--Each patient of a health care provider or health care facility shall respect the health care provider's and health care facility's right to expect behavior on the part of patients which, considering the nature of their illness, is reasonable and responsible. Each patient shall observe the responsibilities described in the following summary.

(6) SUMMARY OF RIGHTS AND RESPONSIBILITIES.--Any health care provider who treats a patient in an office or any health care facility licensed under chapter [395](#) that provides emergency services and care or outpatient services and care to a patient, or admits and treats a patient, shall adopt and make available to the patient, in writing, a statement of the rights and responsibilities of patients, including the following:

SUMMARY OF THE FLORIDA PATIENT'S BILL OF RIGHTS AND RESPONSIBILITIES

Florida law requires that your health care provider or health care facility recognize your rights while you are receiving medical care and that you respect the health care provider's or health care facility's right to expect certain behavior on the part of patients. You may request a copy of the full text of this law from your health care provider or health care facility. A summary of your rights and responsibilities follows:

A patient has the right to be treated with courtesy and respect, with appreciation of his or her individual dignity, and with protection of his or her need for privacy.

A patient has the right to a prompt and reasonable response to questions and requests.

A patient has the right to know who is providing medical services and who is responsible for his or her care.

A patient has the right to know what patient support services are available, including whether an interpreter is available if he or she does not speak English.

A patient has the right to know what rules and regulations apply to his or her conduct.

A patient has the right to be given by the health care provider information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis.

A patient has the right to refuse any treatment, except as otherwise provided by law.

A patient has the right to be given, upon request, full information and necessary counseling on the availability of known financial resources for his or her care.

A patient who is eligible for Medicare has the right to know, upon request and in advance of treatment, whether the health care provider or health care facility accepts the Medicare assignment rate.

A patient has the right to receive, upon request, prior to treatment, a reasonable estimate of charges for medical care.

A patient has the right to receive a copy of a reasonably clear and understandable, itemized bill and, upon request, to have the charges explained.

A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment.

A patient has the right to treatment for any emergency medical condition that will deteriorate from failure to provide treatment.

A patient has the right to know if medical treatment is for purposes of experimental research and to give his or her consent or refusal to participate in such experimental research.

A patient has the right to express grievances regarding any violation of his or her rights, as stated in Florida law, through the grievance procedure of the health care provider or health care facility which served him or her and to the appropriate state licensing agency.

A patient is responsible for providing to the health care provider, to the best of his or her knowledge, accurate and complete information about present complaints, past illnesses, hospitalizations, medications, and other matters relating to his or her health.

A patient is responsible for reporting unexpected changes in his or her condition to the health care provider.

A patient is responsible for reporting to the health care provider whether he or she comprehends a contemplated course of action and what is expected of him or her.

A patient is responsible for following the treatment plan recommended by the health care provider.

A patient is responsible for keeping appointments and, when he or she is unable to do so for any reason, for notifying the health care provider or health care facility.

A patient is responsible for his or her actions if he or she refuses treatment or does not follow the health care provider's instructions.

A patient is responsible for assuring that the financial obligations of his or her health care are fulfilled as promptly as possible.

A patient is responsible for following health care facility rules and regulations affecting patient care and conduct."

The Spanish version of the Florida State Patient's Bill of Rights and Responsibilities (381.026) can and should be accessed at

<http://www.doh.state.fl.us/mqa/Profiling/billofrights.htm>

THE FLORIDA BOARD OF NURSING

According to Florida Statute 464.004:

" (1) The Board of Nursing is created within the department and shall consist of 13 members to be appointed by the Governor and confirmed by the Senate.

(2) Seven members of the board must be registered nurses who are residents of this state and who have been engaged in the practice of professional nursing for at least 4 years, including at least one advanced registered nurse practitioner, one nurse educator member of an approved program, and one nurse executive. These seven board members should be representative of the diverse areas of practice within the nursing profession. In addition, three members of the board

must be licensed practical nurses who are residents of this state and who have been actively engaged in the practice of practical nursing for at least 4 years prior to their appointment. The remaining three members must be residents of the state who have never been licensed as nurses and who are in no way connected with the practice of nursing. No person may be appointed as a lay member who is in any way connected with, or has any financial interest in, any health care facility, agency, or insurer. At least one member of the board must be 60 years of age or older.

(3) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed.”

RULES AND RULEMAKING AUTHORITY

There is a distinct difference between administrative rules and statutes, or laws, like nurse practice acts. All Boards, including the Florida Board of Nursing, are given statutory power, by law, to adopt rules according to Florida Statutes 120.536(1) and 120.54.

In the state of Florida, administrative rules are found in the Florida Administrative Code. Nurses and nursing practice are addressed in Section 64B9. Rules are more specific than statutes. They enable the Board of Nursing, and other Boards, to generate regulations about how the laws, or statutes, will be implemented and enforced. For example, Florida statute requires a two-hour continuing education course on the prevention of medical errors for nurses and all other healthcare professionals. Rules have been generated by the Florida Board of Nursing, and other boards and councils, on what topics, in addition to those already stated in the statute, must be included in a class in order for it to be sufficient enough for nurses to renew their license with the State of Florida. Other rules, relating to nursing and nursing practice, include the required elements of a practice protocol for a nurse practitioner and the guidelines for IV therapy and supervision by a licensed practical nurse.

LICENSURE AND LICENSE RENEWAL

Florida Statutes (464.008, 464.009) relate to the license application process and the other necessary requirements for a person to become a new licensee in the State of Florida through:

- the NCLEX, or *examination* process; or

- *endorsement* provided that the applicant has a “valid license to practice professional or practical nursing in another state or territory of the United States, provided that, when the applicant secured his or her original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in Florida at that time” (Florida Statute 464.009)

Florida Statute 464.013 permits the State to renew licenses on a biennial basis and also to mandate that Florida licensed nurses have up to 30 hours of continuing education per biennium, that is, every 2 years. The rules require less than the “up to 30 hours” and only require 25 hours every two years.

LICENSE DENIALS AND DISCIPLINARY ACTIONS

Florida law (464.018) states that:

“ (1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Procuring, attempting to procure, or renewing a license to practice nursing by bribery, by knowing misrepresentations, or through an error of the department or the board.

(b) Having a license to practice nursing revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of nursing or to the ability to practice nursing.

(d) Being found guilty, regardless of adjudication, of any of the following offenses:

1. A forcible felony as defined in chapter 776.
2. A violation of chapter 812, relating to theft, robbery, and related crimes.
3. A violation of chapter 817, relating to fraudulent practices.
4. A violation of chapter 800, relating to lewdness and indecent exposure.

5. A violation of chapter 784, relating to assault, battery, and culpable negligence.

6. A violation of chapter 827, relating to child abuse.

7. A violation of chapter 415, relating to protection from abuse, neglect, and exploitation.

8. A violation of chapter 39, relating to child abuse, abandonment, and neglect.

(e) Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction; or having committed an act which constitutes domestic violence as defined in s. 741.28.

(f) Making or filing a false report or record, which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the nurse's capacity as a licensed nurse.

(g) False, misleading, or deceptive advertising.

(h) Unprofessional conduct, as defined by board rule.

(i) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances as set forth in chapter 893, for any other than legitimate purposes authorized by this part.

(j) Being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the secretary or the secretary's designee that probable cause exists to believe that the licensee is unable to practice nursing because of the reasons stated in this paragraph, the authority to issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the department. If the licensee refuses to comply with such order, the department's order directing such examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or does business. The licensee against whom the petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The

department shall be entitled to the summary procedure provided in s. 51.011. A nurse affected by the provisions of this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of nursing with reasonable skill and safety to patients.

(k) Failing to report to the department any person who the licensee knows is in violation of this part or of the rules of the department or the board; however, if the licensee verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the licensee is required to report such person only to an impaired professionals consultant.

(l) Knowingly violating any provision of this part, a rule of the board or the department, or a lawful order of the board or department previously entered in a disciplinary proceeding or failing to comply with a lawfully issued subpoena of the department.

(m) Failing to report to the department any licensee under chapter 458 or under chapter 459 who the nurse knows has violated the grounds for disciplinary action set out in the law under which that person is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part I of chapter 641, in which the nurse also provides services.

(n) Failing to meet minimal standards of acceptable and prevailing nursing practice, including engaging in acts for which the licensee is not qualified by training or experience.

(o) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

(3) The board shall not reinstate the license of a nurse, or cause a license to be issued to a person it has deemed unqualified, until such time as it is satisfied that such person has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of nursing.

(4) The board shall not reinstate the license of a nurse who has been found guilty by the board on three separate occasions of violations of this part relating to the use of drugs or narcotics, which offenses involved the diversion of drugs or narcotics from patients to personal use or sale.

(5) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license."

UNPROFESSIONAL CONDUCT

According to Florida Administrative Code, Section 64B9-8.005, there are several infractions considered unprofessional conduct. Unprofessional conduct subjects the nurse to disciplinary action by the Florida Board of Nursing.

These infractions include:

- Inaccurate recording; or
- Misappropriating supplies, equipment or drugs; or
- Leaving a nursing assignment without proper notification of a supervisor (abandonment); or
- Practicing as a registered or practical nurse in the State of Florida without a current license; or
- Acts of negligence and gross negligence that constitute either acts of omission or commission; or
- Submitting a false attestation of 25 hours of continuing education when it has not be attended or completed, as per the laws and rule of the State of Florida; or
- Failure of an ARNP to comply with the registration and compliance requirements of the role; or
- Failing to perform according to the minimal standards of acceptable prevailing nursing practice, even when it does not cause actual harm or injury to a patient; or
- The falsification or altering of official records such as nursing progress notes, time records and employment applications; or

- Violating confidentiality; or
- Discriminating on the basis of creed, race, religion, sex, age or national origin; or
- Engaging in deceit, fraud or misrepresentation in taking the licensing exam; or
- Aiding and abetting the practice of nursing by any person not licensed to do so; or
- Impersonating another licensed practitioner or permitting another person to use one's own license or certificate for the purpose of nursing for compensation; or
- Exercising influence on a person in such a manner to exploit the patient for financial gain of the licensee or third party; or
- Testing positive for illicit drugs; or
- Violating a Florida Board of Nursing order entered in a licensing procedure; or
- Providing false or incorrect information to the employer regarding the status of a license.

CERTIFIED NURSING ASSISTANTS (CNAs)

In the State of Florida, certified nursing assistants are regulated under the Florida Board of Nursing and the Council of Certified Nursing Assistants.

Florida Statute 464.2085 establishes this Council, its composition and its roles. The Council consists of five members, the chairperson, two registered nurses and one licensed practical nurse. The licensed practical nurse and at least one of the registered nurse members must be currently employed in a licensed nursing home. Additionally, the registered nurse member must also supervise CNAs in the nursing home as part of their employment.

The Council addresses areas of concern regarding CNAs in the State and makes the following types of recommendations to the Florida Board of Nursing:

- certification policies and procedures,
- rules for the training, education and certification procedures and processes for CNAs.

A certified nursing assistant has to take 18 hours of inservice training during each calendar year.

FLORIDA BOARD OF NURSING RULES:

Continuing Education

Florida State rule 64B9-5.001 lists the continuing education requirements that are necessary for initial licensure and for the renewal of nursing licenses every two years, that is, each biennium.

All RNs and LPNs must successfully complete at least 25 contact hours of continuing education every two years, unless they are on active duty with the Armed Forces. Each contact hour is equivalent to 50 minutes of classroom, or live instruction, or 50 minutes of reading an independent home study or computer based course.

Of these 25 contact hours, one (1) contact hour must for a domestic violence course, one (1) contact hour must for an AIDS/HIV course and two (2) contact hours must be awarded for a preventing medical errors course. RNs and LPNs can take a one (1) contact hour course in the end of life care to substitute for either the AIDS/HIV requirement or the domestic violence requirements. For those getting their initial license in this State, 3 contact hours of AIDS/HIV must be taken. These mandatory courses must approved by the Florida Board of Nursing.

The content of the State mandated AIDS/HIV course must include:

- infection control procedures;
- modes of transmission;
- prevention;
- clinical management; and
- Florida law relating to issues such as testing, confidentiality and treatment.

The required domestic violence course must address:

- statistics relating to the number of people that are victims of domestic violence;
- statistics relating to the number of people who are perpetrators of domestic violence;
- the signs of domestic violence; and

- interventions, including screening, assessment, and others, such as counseling, referrals to community domestic violence centers, advocacy groups, legal aid, shelters, follow up victim counseling, batterer counseling, and child protection services.

The content of the State mandated preventing medical errors course must include:

- factors that impact on the occurrence of medical errors;
- error prone situations and how to recognize them;
- processes, such as root cause analysis, to improve patient outcomes
- reporting responsibilities;
- special populations at risk and their safety needs; and
- educating the public about medical errors and how they can be prevented.

The content of the State mandated end of life course, when taken in lieu of AIDS/HIV or domestic violence, must include at least one of the following content areas:

- client rights in respect to decision making and self determination;
- palliative versus curative care;
- legal and ethical issues at the end of life;
- advance directives;
- emotional, psychosocial, spiritual issues;
- pain management and comfort;
- available options, alternatives and choices; or
- Florida law relating to end of life and end of life care.

LPNs and Intravenous Therapy

Continuing Education

Chapter 64B9-12 outlines the limited role of LPNs in intravenous therapy. Some aspects of intravenous therapy are within the scope of practice for the LPN, provided the necessary education and

competency validation are accomplished. There are also some aspects of intravenous therapy that are outside of the scope of practice for the LPN.

The educational component of IV therapy consists of 40 contact hours of education with a Florida Board of Nursing approved course and competency assessment/validation by a registered nurse.

LPNs can perform the following aspects of intravenous therapy, under the *direct supervision* of a registered nurse who is "on the premises and immediately physically available":

- The initiation of blood, blood products, plasma expanders, cancer chemotherapy, and investigation, research, drugs;
- Mixing intravenous solutions;
- IV pushes. Saline and heparin flushes can be done under the *direction* of an RN, less stringent than under the *direct supervision* of an RN.

Additionally, the following aspects of IV therapy can be done by an LPN under the *direction* of a registered nurse:

- Calculating flow rates and adjusting flow rates;
- Hanging hydrating fluids;
- Changing dressings, removing catheter and needles;
- Inspection of the intravenous site; and
- Observation and reporting of adverse reactions to IV therapy.

The required intravenous therapy class of 40 contact hours must minimally include a wide variety of topics including, but not limited to, the body's homeostatic and regulatory functions, venipuncture technique, infection control measures, fluids and electrolytes, parenteral nutrition, blood and blood products, local and systemic complications, preventing and treating local and systemic complications, methods of intravenous therapy administration and their advantages and disadvantages, and 4 contact hours of central line management if central lines will be used by the LPN and other content areas.

In addition to the required 40 contact hours of education, competency assessment and validation must be done and documented by a

registered nurse qualified to perform this role prior to an LPNs performing aspects of intravenous therapy.

OFFICIAL RECORDS AND DOCUMENTATION

The following documents are considered official records:

- Medical chart documentation, including nurses progress notes;
- Time records; and
- Employment records.

The falsification of official records is considered unprofessional conduct and, as such, subject to disciplinary action by the State Board of Nursing.

SUPERVISION AND DELEGATION

Although the definitions and provisions of nurse practice acts across the country are broad and non-specific in respect to the scope of practice issues and tasks within and outside of nursing practice, they do offer guidance and direction about nursing practice. As you have probably noticed, certified nursing assistants and other assistive personnel, including non-licensed assistive personnel and "nurse extenders", are not included in the provisions of the Florida Nurse Practice Acts but they do delineate the roles of registered professional nurses, licensed practical nurses and advanced practice or specialized nursing practitioners.

The implications of supervision and delegation are loaded with challenges and legal concerns, particularly with the emergence of new classifications of nonlicensed, noncertified assistive personnel who are permitted to perform a role within a particular health care facility, but who are not licensed or certified by the state. These personnel have a wide variety of titles and roles, such as patient care aide, personal care assistant, patient care technician, telemetry aide, etc. These staff members are not regulated by the Florida Board of Nursing in terms of educational preparation, permissible scope of practice, licensure, certification or continuing education.

Some of the above job titles include traditional functions usually assigned to the nursing assistant, such as bathing and hygiene but they may also assume some other responsibilities such as venipuncture, EKGs, and/or the monitoring of telemetry. All of these titles and roles sometimes require the supervision of the nurse. As a result, it is the nurse - often the only independent practitioner, who is

accountable for all aspects of care delegated to other members of the health care team, including not only unlicensed assistive personnel but also to others. This responsibility can lead to significantly disastrous results if supervision and delegation are not done according to provisions of the law and with other considerations.

The most frequently employed nonlicensed nursing staff member is the nursing assistant or CNA. CNAs are regulated by Florida State and the Florida Board of Nursing in terms of educational preparation, permissible scope of practice, and continuing education. They are not licensed but they are certified to practice in a specific role. They are sometimes referred to as unlicensed, assistive personnel (UAP).

Unlicensed personnel, certified and not certified, have appeared on the scene because the cost of health care has skyrocketed to such a degree that is no longer cost-effective to employ an all licensed or registered nursing staff. These healthcare workers cannot work independently. They must be under the supervision of a registered nurse or, under certain conditions, an LPN. Unlicensed, assistive staff assist the nurse. They do NOT replace the nurse. Unlicensed personnel do not perform nursing functions; they perform nursing related functions, as delegated, under the supervision of the nurse.

Among the tasks that these unlicensed, assistive personnel can perform include:

- Assisting the nurse with the collection of data relating to the measurement and reporting of vital signs such as temperature, pulse, respiration, and blood pressure;
- Measuring height and weight;
- Recording intake and output;
- Observation and reporting changes in the patient's condition and reactions to care; and
- Interacting with patients, family members, significant others and other members of the healthcare team;
- Helping with the activities of daily living (ADL);
- Nonpharmacological comfort measures;
- Assistance with ambulation, transfers, range of motion, feeding, skin care to intact skin, and other tasks such as making beds and assisting with bowel and bladder functions.

The following tasks cannot be delegated to unlicensed assistive personnel (UAP). They all include aspects of care within the nursing process that require nursing judgment(s), according to Florida State Rules of the Board of Nursing Chapter 64B9-14.

Some examples of tasks that cannot be legally delegated to unlicensed assistive personnel include:

- Assessment;
- Nursing diagnosis;
- Establishment of patient care goals;
- The evaluation of how well the patient has or has not achieved established goals; and
- All other tasks outside of the scope of practice for a UAP; and
- All other tasks that the person is not competent to do.

Registered nurses supervise licensed practical nurses as well. This assignment should be consistent with their scope of practice, as stated in the Florida State Nurse Practice Act, their competencies, the policies and procedures of the facility and the needs of the patient.

Florida State Rules of the Board of Nursing 64B9-14.002 states that "total nursing care responsibility remains with the qualified nurse delegating the task or assignment for supervision."

Here are some basic rules to follow in reference to the assignment of care and the delegation of patient care responsibilities:

1. Assign and delegate only those tasks that are permissible according to state law, federal regulations and your facility's policies and procedures.
2. Because the person delegating is still ultimately responsible and accountable, closely supervise and follow up on delegated tasks. If something is done incorrectly or a patient is harmed, it is the person who has delegated that is ultimately responsible.
3. Assign the right person to the right job. Assess patients to insure that you are delegating the appropriate tasks based on the patient's condition and the abilities of the staff. Base assignments on the

patient's current condition and the competency or skills of the staff members.

4. Monitor the patient for responses to the care provided by others and document those responses in a complete and timely manner.
5. Regularly follow up and monitor the performance of all those you supervise. Corrective action must be immediately taken if someone is not performing according to established standards.

LEGISLATIVE INITIATIVES: ADVANCING THE NURSING PROFESSION IN FLORIDA and PROTECTING THE PUBLIC

Florida Center for Nursing

Our Florida Legislature is leading the nation in several areas, including the establishment of a Florida Center for Nursing, with the passing of Florida Statute 464.0195.

The goals and challenges before the Florida Center for Nursing consist of:

- addressing the nursing shortage, recruitment, retention, and utilization of nurses in the workforce;
- generating a statewide strategic to address nursing manpower in this state;
- establishing and maintaining a database on nursing supply and demand in the state that includes not only data relating to the current supply but also the projected future needs;
- recommending changes and strategies to meet the nursing shortage and to advance the image of nursing with recognition and rewards, such as magnet status and media support.

The Florida Intervention Project for Nurses (IPN)

The Intervention Project for Nurses (IPN), begun in 1983, is a nationally recognize program that protects the safety of the public by intervening when a nurse is potentially practicing in an unsafe manner as a result of alcohol and/or drug use or misuse or another physical or psychological impairment that makes them unsafe to practice.

Their objectives include:

1. "To ensure public health and safety through a program that provides close monitoring of nurses who are unsafe to practice, due to the use of drugs including alcohol and/or psychiatric, psychological or physical condition (chapter 455.261).
2. To provide a program for affected nurses to be rehabilitated in a therapeutic, non-punitive, and confidential process.
3. To provide an opportunity for retention of nurses within the nursing profession.
4. To facilitate early intervention, thereby decreasing the time between the nurse's acknowledgment of the problem and his/her entry into a recovery program.
5. To require the nurse to withdraw from practice immediately, and until such time that the IPN is assured that he/she is able to safely return to the practice of nursing.
6. To provide a cost effective alternative to the traditional disciplinary process.
7. To develop a statewide resource network for referring nurses to appropriate services.
8. To provide confidential consultations for Nurse Managers." (IPN,2004)

The IPN Program has many services, including educating nurses throughout the state about their program and services. To learn more about IPN visit their website at <http://www.ipnfl.org>

INTRODUCTION TO HEALTHCARE ETHICS

Ethics and ethical practice has, and continues to remain, one of the most important paramount decision-making frameworks in healthcare as well as in other professions. Many professions and professionals are often in a position where they influence the lives of others. This position makes it necessary for them to accept the responsibility of acting ethically and in the interest of those they serve. Ethically, we are held accountable for our acts of omission and commission.

Professions have ethical codes in order to thoroughly, and as parsimoniously as possible, address all possible ethical concerns in the profession. Ethical codes are formal statements about commitments to the good. They contain values and guide the practice(s) of those in the profession or business area.

Accountants, attorneys, real estate brokers, and government employees have codes of ethics that they must adhere to. Accountants are held accountable for honesty and honest accounting practices; real estate brokers are held accountable for disclosures regarding problems and potential problems, such as asbestos, lead and sink hole risks; attorneys are ethically bound to maintain confidentiality and privileged communication regarding some matters; and government employees are ethically bound to avoid any conflicts of interest. Recently, corporate ethics has become a national focus of attention, especially after the Enron Corporation collapse and their faulty accounting systems.

The ultimate purpose of ethical codes in the healthcare industry is to protect the rights and safety of the healthcare consumer. Healthcare professionals must act ethically and adhere to their own professional codes of ethics. (National Council of State Boards of Nursing, 1996)

ETHICS: BASIC PRINCIPLES AND CONCEPTS

Ethics is defined as "the discipline dealing with what is good and bad and with moral duty and obligation; a set of moral principles or values; a theory or system of moral values; the principles of conduct governing an individual or a group <professional *ethics*>; a guiding philosophy" (Merriam-Webster, 2001).

Ethics is a body of knowledge containing values that are held by individuals of groups. Ethics and ethical codes in healthcare reflect four basic ethical principles, or underlying themes, that serve to organize the body of medical ethics and medical ethical decision-making.

These four ethical principles are:

- Autonomy,
- Beneficence,
- Nonmaleficence, and
- Justice.

Autonomy is "the quality or state of being self-governing; especially : the right of self-government; self-directing freedom and especially moral independence; a self-governing state" (Merriam-Webster, 2001).

Beneficence is defined as "the quality or state of being beneficent" (Merriam-Webster, 2001).

Nonmaleficence is best described as doing no harm. The Hippocratic Oath is an excellent example of how, historically, ethics and ethical principles have been in the healthcare profession throughout the ages. The Hippocratic Oath can be read below in Table 1.

Justice is defined as “the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments; the administration of law; *especially* : the establishment or determination of rights according to the rules of law or equity; the quality of being just, impartial, or fair; the principle or ideal of just dealing or right action; conformity to this principle or ideal; the quality of conforming to law; conformity to truth, fact, or reason; correctness ”(Merriam-Webster,2001).

Autonomy

The word autonomy is derived from the Greek word for self-rule. In reference to healthcare, autonomy is strongly linked to the client’s right to decision-making and self-determination. All competent adults have the basic freedom to choose and make choices.

Patients and residents have a right to informed consent and informed refusal. They have the basic right to autonomous, knowledgeable decision-making and the ability to make choices, whether or not the healthcare provider(s) agrees with them or not.

Adults have the right to make decisions when they are of majority age, that is, at least 18 years of age, and they are deemed mentally competent to do so. Minors, on the other hand, are not legally able to make a decision about what care they will or not receive until they reach the age of 18 or they become a legally emancipated minor. Parents generally make legal decisions for minors. In some cases, a court appointed guardian makes these decisions, in the absence of a parent.

The adult consumer of healthcare services, or their surrogate, proxy, decision maker, has the right to consent to care and they also have the right to refuse any aspect of care or a treatment. These autonomous decisions are based on the individual’s own unique values and beliefs; they are not based on what the healthcare provider feels is best for them. Self determination and autonomous decision-making must be ethically upheld by all healthcare professionals at all times.

Beneficence

Simply stated, beneficence is doing good. Beneficence is doing the ethically correct thing. It reflects an individual's intentional acts, not errors and mistakes. Beneficence aims to promote the well being of others, not self. These intentional acts take into serious consideration the welfare of others. It is the welfare of others that is of greatest importance.

Beneficence challenges and ethical dilemmas in healthcare occur when it is not totally clear about what is truly good for a particular patient. Patient and resident needs are generally complex and approaches to care are numerous and varied. Many dilemmas arise because of these complexities and other factors.

The multidisciplinary healthcare team sometimes has difficulty arriving at a plan of care that is best for the patient and even then, not all members of the team may be in agreement about what course of treatment or care is best. Additionally, the autonomous decisions of the patient may make the "best" treatment options not feasible because the patient, resident or surrogate, proxy, decision maker has expressed the fact that they do not want a particular treatment or intervention. Lastly, the team and patient or resident may collectively agree to what is best, but this option is not available or accessible to them and/or the option may not be legally permissible. For example, euthanasia is not legally permitted in our country. Any patient requests for euthanasia, therefore, cannot be supported because it is illegal. The healthcare team cannot agree to, or support, this option despite their own personal beliefs that euthanasia should be a legally acceptable and that this is the "best" option, especially when a patient or resident is using their right to self determination by expressing a desire for it.

Nonmaleficence

Nonmaleficence literally means, "do not harm". Maleficence is defined as "doing harm". Nonmaleficence and beneficence are closely related, particularly in healthcare ethics, because many treatments and procedures have both benefits (beneficence) and risks for harm. Some of these risks can cause patient harm and pain (maleficence).

For example, a client under our care may choose to have parenteral nutrition to correct a nutritional deficit. Prior to consenting, the individual was correctly and completely informed about parenteral nutrition, its benefits and its risks, including those associated with infection. Alternatives to parenteral nutrition were also discussed with the patient or proxy decision maker, as appropriate. If this patient

chooses to have the parenteral nutrition and gets an infection as a result of it (maleficence), it is not considered unethical because the patient autonomously decided to have the parenteral nutrition after they were advised of the risks associated with this treatment and because the harm, or infection, was not done intentionally by the nurses and other healthcare professionals.

Justice

The principle of justice entails fairness, impartiality, and justness. Challenges in the area of justice are numerous in the healthcare industry, particularly because fair and impartial access to care is sometimes not possible due to the constraints associated with healthcare dollars and the allocation of limited resources. These kinds situations are generally highly complex and difficult to resolve using justice alone as the ethical framework for decision-making.

Other healthcare situations, however, are easily addressed in terms of the principle of justice. Providing the same level of care and the same level of quality for all those in our care, without discrimination, is straightforward and quite simple to ethically accomplish.

THE HIPPOCRATIC OATH

I swear by Apollo Physician and Asclepius and Hygieia and Panacea and all the gods and goddesses, making them my witnesses, that I will fulfill according to my ability and judgment this oath and this covenant:

To hold him who has taught me this art as equal to my parents and to live my life in partnership with him, and if he is in need of money to give him a share of mine, and to regard his offspring as equal to my brothers in male lineage and to teach them this art—if they desire to learn it—without fee and covenant; to give a share of precepts and oral instruction and all the other learning to my sons and to the sons of him who has instructed me and to pupils who have signed the covenant and have taken an oath according to the medical law, but to no one else.

I will apply dietetic measures for the benefit of the sick according to my ability and judgment; I will keep them from harm and injustice.

I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. Similarly I will not give to a woman an abortive remedy. In purity and holiness I will guard my life and my art.

I will not use the knife, not even on sufferers from stone, but will withdraw in favor of such men as are engaged in this work.

Whatever houses I may visit, I will come for the benefit of the sick, remaining free of all intentional injustice, of all mischief and in particular of sexual relations with both female and male persons, be they free or slaves.

If I fulfill this oath and do not violate it, may it be granted to me to enjoy life and art, being honored with fame among all men for all time to come; if I transgress it and swear falsely, may the opposite of all this be my lot. What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself holding such things shameful to be spoken about.

If I fulfill this oath and do not violate it, may it be granted to me to enjoy life and art, being honored with fame among all men for all time to come; if I transgress it and swear falsely, may the opposite of all this be my lot.

Scarborough, John. "Hippocrates." *World Book Online Reference Center*. 2005. World Book, Inc. 15 Jan. 2005.

<<http://www.aolsvc.worldbook.aol.com/wb/Article?id=ar257540>>.

ETHICS IN HEALTHCARE AND NURSING: HISTORY AND CURRENT STATE

Historically, the first documented sign of ethics in healthcare was the Hippocratic Oath that was discussed above in the context of nonmaleficence. Florence Nightingale continued the development of ethics for nurses as she promoted ethics throughout her practice and within the schools of nursing that she was instrumental in running. The need for ethics and ethical practice in nursing and healthcare continues from these early beginnings to the current day.

At the current time, the International Council of Nurses' Code of Ethics for Nurses, on a global scale, and the American Nurses' Association Code of Ethics, on the national level, ethically drive the majority of

nurses and the bulk of nursing practice in our nation. There are, however, other ethical codes that address subspecialties with the profession, for example, nursing research.

International Council of Nurses

The International Council of Nurses (ICN) initially composed an international code for nurses throughout the world in 1953. Their most recent Code of Ethics for Nurses (2000) is organized around four elements, as follows:

1. nurses and *people*,
2. nurses and *practice*,
3. nurses and *coworkers* and
4. nurses and the *profession*.

The *nurses and people* element addresses basic client rights, confidentiality, and the need to uphold these rights, as well as the values and customs of the healthcare consumer.

The *nurses and practice* element includes guidance regarding competency, education and continuing education, personal health and the need for nursing judgment in respect to accepting and delegating the responsibility of client care.

The third element, *nurses and coworkers*, underscores the need for cooperation and collaboration as well as the need to take immediate action when a nurse believes that the actions of others jeopardize quality of care.

Finally, the fourth element, *nurses and the profession*, relates to the need for nurses to abide by their standards of practice and to actively participate in the expansion of their unique body of knowledge.(International Council of Nurses, 2000).

American Nurses Association (ANA)

The most recent American Nurses Association Code of Ethics was published in 2001. Some of the same elements included in the International Council of Nurses' ethical code are also found in the ANA's ethical code. The Code, however, is organized around nine provisions as below:

The nine provisions address:

1. *dignity* and the uniqueness of every individual. Respect, compassion and the provision of care to all without any discrimination is emphasized
2. the need for nurses to accept their responsibility in making a *commitment* to the client. The client is defined in this ethical code as an individual, group and/or community.
3. *advocacy*. The need for nurses and the nursing profession to protect the rights, health and safety of the client is underscored in this provision.
4. *accountability* and *responsibility* for one's own practice. This provision holds the nurse responsible and accountable for their own practice. Additionally, the nurse is held accountable for the delegation of aspects of care to others, According to the American Nurses Association Code of Ethics, delegation must be done using sound professional judgment and taking into consideration what is best for the client(s) receiving nursing care.
5. responsibilities to *one's self*- safety, integrity, competence and growth, personal and professional are the responsibilities of the nurse.
6. the need for nurses to act, on an individual and collective basis, to establish, maintain and improve conditions of *employment* and the place of employment in order to facilitate the provision of safe, quality care.
7. *contributions* that nurses must make in terms of clinical practice, administration and education in order to advance the profession of nursing.
8. *collaboration* with the public and other healthcare professionals in order to best meet the needs of the community on a local, national and international level.
9. the role of the nursing profession in terms of maintaining its own *integrity and practice*, as well as the responsibility of the profession and its members to shape public policy and articulate nursing values. (American Nurses Association, 2001)

ETHICAL DILEMMAS

An ethical dilemma arises when two or more of the four (autonomy, beneficence, nonmaleficence, and justice) ethical principles are in conflict with one other. For example, when what is good is not justly and fairly distributed or when autonomy is in conflict with beneficence.

Ethical dilemmas disrupt internal and external harmony and homeostasis. They are uncomfortable and often a source of disagreement and debate among members of the healthcare team. For example, an ethical dilemma relating to who gets and who does not get a particular treatment or an organ, can be a source of great consternation and frustration. Allocating limited healthcare resources is an omnipresent challenge in our industry.

Case Study

Arnold is a 53-year-old businessman and a father of 4 children. He is the sole source of family income and is the CEO of a Fortune 500 company. Jane is a 23-year-old developmentally disabled woman without children and without any health insurance. Her medical costs are covered with Medicaid and she is presently living in one of her state's long-term care facilities.

Both individuals are in need of a liver transplant. Both are acceptable candidates. Jane has been waiting for 2 years and Arnold for 1 _ years.

A young male has died in an automobile accident and his liver has been donated. He is a compatible donor to both Jane, first on the list, and Arnold, 2nd on the list.

Who should get the liver, using the basic ethical principle of justice?
Who should get the donated liver, using the basic ethical principle of beneficence?

Ethical dilemmas, although challenging, can be resolved. Ethical dilemmas are best resolved on a case-by-case basis within the context of the unique patient and their unique needs and by using the four basic ethical principles for analysis and decision-making.

The resolution of ethical dilemmas is also best accomplished by a group, rather than one individual. Collective analysis and decision making promotes diverse thinking and often a decision that can be

ethically and comfortably accepted by all of those involved in the process.

ETHICS COMMITTEES

Most healthcare facilities now have ethics committees to address ethical dilemmas. Attend a meeting at your facility, especially if you have never attended one before. Ethics committees typically consist of a diverse group of healthcare professionals from different disciplines. Most often there will be representatives from medicine, nursing, pharmacy and nutritional services. Many also have an administrator, a chaplain and a healthcare consumer as members. An ethicist consultant is sometimes added to the group composition when the group is having difficulty resolving a dilemma without the help of an expert ethicist to consult with.

Ethics Committee policies and procedures vary from facility to facility, however, ones that make provisions for the following are the most helpful.

- Ethics committee members should be educated about ways to analyze ethical dilemmas and about sound ethical decision-making. Ethical dilemmas should be analyzed with a systematic exploration of ethical values according to their level of importance until the two or more ethical principles that are in conflict with each other become balanced. After analysis a consensus should be obtained in terms of the decision making process.
- Staff should have formal and informal ways to articulate their ethical concerns. Ethical dilemmas occur at the bedside not in administrative offices. Committees that are not responsive to all levels of staff and their concerns cannot be effective in fulfilling their roles and responsibilities.
- Staff should be able to expect a decision from the ethics committee in a timely manner. Ethical dilemmas are a source of stress for individuals and groups. Often, they are divisive. They also threaten the safety and well being of the patient. Staff should be able to expect that an ethical decision is made in a prompt and timely manner so that the dilemma can be resolved and patient care decisions can then be made and carried out without conflict. Additionally, it is usually helpful to have the staff member attend the meeting during which their dilemma is analyzed and resolved. They will be able to add to the discussion in terms of the unique situation and will also benefit from the

- learning and personal growth they acquire as a result of their participation.
- Ethics committees should educate members of their facility about ethics, ethical dilemmas, ethical decision-making, the role of their ethics committee and how to communicate an ethical concern or dilemma.

Ethics committees are an excellent resource for nurses and all other healthcare professionals.

COMMON ETHICAL ISSUES

Inadequate Staffing

Inadequate staffing and unsafe staffing levels are a matter of grave concern. Some states, for example California and Florida, now have minimum staffing laws to prevent the problems associated with inadequate and unsafe staffing. Although these laws have somewhat helped, they have not eliminated the problem altogether.

What should a nurse, or other healthcare provider, do when they believe that staffing is not adequate enough to safely and effectively meet the needs of the patients that they are caring for? Should they refuse the assignment? Should the nurse accept the assignment but pursue the matter in a formal and prompt manner? Should they just ignore the problem and do the best they can do?

The answers to these questions are not simple and easy. Inadequate staffing is a complex problem without simple solutions. Unsafe staffing can be a sporadic and rare occurrence, one that results from someone calling in sick or it can be an ongoing problem with no apparent efforts underway to correct it.

Ethically, the nurse must address inadequate staffing in order to protect the patients and their rights to safety, freedom from harm and quality care. Ignoring the problem not only places the nurse in a position of legal liability, it is also not ethical. Ethically, the nurse must uphold the principles of beneficence and nonmaleficence. The nurse's duty to promote the well being of others (beneficence) is not being fulfilled and the nurse's duty to do no harm (nonmaleficence) is also not being fulfilled.

Patients suffer harm and a lack of the care they are entitled to as a result of inadequate and unsafe staffing levels. Additionally, according

to the American Nurses Association Code of Ethics nurses must act, on an individual and collective basis, in order to establish, maintain and improve workplace conditions that promote the provision of safe, quality care.

Although inadequate staffing is not an ethical dilemma with two or more ethical principles in conflict, it is a frequently occurring ethical issue because one or more of the four principles of ethics are not upheld. Nurses, and other healthcare providers, must report staffing concerns to their supervisor and then up the chain of command until the situation is rectified. Yes, it is true that your actions may lead to some repercussions, nonetheless, it is your ethical responsibility to do so.

Inappropriate Doctor's Orders

Inappropriate doctor's orders are also a frequently occurring ethical issue. What should a nurse, or other healthcare professional, do when they believe that a doctor's order is not appropriate for the patient? Should they just ignore the order? Should they just carry out the order because the doctor ordered it?

Healthcare providers, using profession judgment, should know what doctors' orders are and are not appropriate based on the current condition of the patient. They must question an order when they suspect that it is inappropriate. A questionable order must never be carried out until it is clarified and deemed appropriate by the person carrying it out. To carry out an inappropriate order jeopardizes the ethical principles of beneficence and nonmaleficence. Similar to unsafe staffing levels, this is an ethical issue rather than an ethical dilemma with two or more competing ethical principles. To carry out an inappropriate order is simply unethical.

The first thing that a nurse, or another professional, must do when they are given an order to do something that is inappropriate, illegal or unethical is to NOT follow the order. Communicate with the person giving the order, and document that conversation as well as your rationale for not following the order. Clearly communicate, and document the patient's current condition and why the order is not consistent with the patient's current condition. Communicate with your supervisor and follow further up the chain of command, or the channel of communication, until the inappropriate order is discontinued or it becomes apparent to you that it is indeed appropriate and necessary. To do otherwise is to jeopardize the well being of the patient and

perhaps cause harm (maleficence). Yes, your questioning actions and your refusal to follow the order may lead to some repercussions, nonetheless, there are no other options. It is your professional, ethical responsibility to do good and to do no harm.

Euthanasia and Physician Assisted Suicide

Euthanasia and physician assisted suicide are commonly occurring and recent emergent ethical issues, ones with a tremendous amount of lively ethical debate on the international, national and local frontier. These issues are highly complex with religious, legal and cultural implications.

Those that support euthanasia and physician assisted suicide feel that quality of life and the right of an individual to self determination must be addressed with these alternatives, especially when the availability of so many life saving and life supporting interventions tend to prolong a life with little or no quality and when a person chooses to die rather than live. Those who argue against euthanasia and physician assisted suicide believe that they are immoral and equivalent to murder. They also argue that euthanasia and physician assisted suicide can lead to the eradication of people viewed by society as not having a satisfactory quality of life. For example, some believe that euthanasia can lead to the elimination of developmentally disabled people once it is legally acceptable.

Voluntary euthanasia can be defined as the intentional act of ending a life at the request of a competent person who wishes to die.

Involuntary euthanasia is defined as the intentional ending of someone's life without the request of a competent person. Euthanasia is also referred to as "mercy killing".

Physician assisted suicide is a similar concept, but it is slightly different. Physician assisted suicide is defined as a person ending their own life with the assistance of a physician. Typically, this assistance consists of the provision of medications, which the person can use to end their life when they decide to do so. Physician assisted suicide involves a physician making the death available but they do not serve as the direct agent, whereas, there is a direct agent, such as a physician or a nurse, that is involved with voluntary and involuntary euthanasia.

In 1994, the American Nurses Association (ANA) published a position paper entitled "Ethics and Human Rights Position Statements: Active Euthanasia, in which it addressed the issue of active euthanasia. The ANA does not consider voluntary or involuntary euthanasia ethical.

Euthanasia is also not permitted by law in the United States even if this action can be viewed as compassionate and supportive of the patient's wishes, either explicit or implicit. It is not legal.

The American Nurses Association (ANA) has, however, addressed some commonly occurring issues of ethical concern at the end of life, including the need to provide comfort even when comfort measures result in the cessation of some basic bodily functions, such as respiration. They also ethically support the cessation of hydration and nutrition, and the withdrawal of and withholding of resuscitation and other life sustaining measures, when chosen by the patient or surrogate decision maker in the absence of the patient's wishes.

The ANA, in support of the patient's need for comfort at the end of life, does encourage the implementation of pain management regimens even if these interventions hasten death. However, such interventions cannot be employed for the sole purpose of ending a life. (American Nurses Association, 1994; American Nurses Association, 2001).

"A nurse's role with regard to a terminally ill patient encompasses promotion of comfort and an optimal dying experience and extends through the continuum of life through death. Careful assessment and management of pain should be the principal goal of a palliative care plan." (American Nurses Association, 2001)

The ANA position statement, *Promotion of Comfort and Relief of Pain in Dying Patients* (2001), explores the issue of pain control in the terminally ill. The statement makes two important points:

- "Pain relief and the promotion of comfort as primary acts are hallmarks of professional nursing practice.
- The possibility of hastening death through the acts of promoting comfort and alleviating pain is a possible consequence of the primary act and is therefore ethically justified." (American Nurses Association, 2001)

"Many factors in a patient's personal profile should be considered when administering potentially lethal doses of medication. These include the existence of a living will, cultural background, family influences, and the patient's desires. The appropriate consideration of these factors necessitates reciprocal relationships among physician, nurse, patient (if able), and family, in which there is open discussion of all parties' concerns and needs.

Pain relief, facilitation of comfort, and an optimal dying experience must be differentiated from two unethical means of ending life, active euthanasia and assisted suicide. These acts stand in conflict with the ANA's *Code for Nurses with Interpretive Statements, 1985*, which serves as the main ethical resource for the guidance of nursing actions." (American Nurses Association, 2001)

"*The Pain Relief Promotion Act* (H.R. 2260), introduced in Congress in 1999, includes a troubling provision allowing the Drug Enforcement Agency to investigate the intentions of health care professionals who prescribe medication. The ANA opposes this legislation, believing it would create a barrier to effective palliative care and prevent patients from receiving end-of-life treatment. The ANA has urged Congress to vote against the proposed legislation and to focus more attention on federal support for pain management and palliative care." (American Nurses Association, 2001).

ETHICAL RESOURCES

Websites

The American Society for Bioethics and Humanities
<http://www.asbh.org/>

American Society of Law, Medicine & Ethics
<http://www.aslme.org/>

Center for Biomedical Ethics at Case Western Reserve University
<http://www.cwru.edu/med/bioethics/bioethics.htm>

Center for Biomedical Ethics at Stanford University
<http://scbe.stanford.edu//>

Center for Ethics and Humanities in the Life Sciences at Michigan State University
<http://www.bioethics.msu.edu/>

Center for Ethics in Health Care (Oregon Health Sciences University)
<http://www.ohsu.edu/ethics/>

Center for Medical Ethics and Health Policy at Baylor College
<http://www.bcm.edu/ethics/>

Do No Harm; The Coalition of Americans for Research Ethics

<http://www.stemcellresearch.org/>

International Bioethics Committee (part of UNESCO)

http://portal.unesco.org/shs/en/ev.php-URL_ID=1372&URL_DO=DO_TOPIC&URL_SECTION=201.html

Kennedy Institute of Ethics

<http://kennedyinstitute.georgetown.edu/site/index.htm>

National Bioethics Advisory Commission (U.S.)

<http://www.bioethics.gov/>

National Catholic Bioethics Center (U.S.)

<http://www.bioethics.gov/>

Books and Publications

Code of Ethics for Nurses With Interpretive Statements by American Nurses Association

Case Studies in Nursing Ethics by Sara T. Fry, Robert M. Veatch

Nursing Ethics : Across the Curriculum and Into Practice by Janie Butts and Karen Rich

Ethics And Issues In Contemporary Nursing by Margaret A. Burkhardt and Alvita K. Nathaniel

Nursing Ethics through the Life Span (4th Edition) by Elsie Bandman and Bertram Bandman

Sensitive Judgment : Nursing, Moral Philosophy and the Ethics of Care by P. Nortvedt

Concepts and Cases in Nursing Ethics (2nd Edition) by Anne Moorhouse and Michael Yeo (Editors)

Ethics in Nursing Practice: A Guide to Ethical Decision Making by Sara T. Fry and Megan-Jane Johnstone

Nursing Ethics: Communities in Dialogues by Rose Mary Volbrecht

ETHICS GLOSSARY

Advance directives. Instructions (usually written) from a competent individual that stipulates the forms of medical treatment to be provided by caregivers and/or designates someone to act as a proxy should the person at some future date lose decision making capacity. Living wills and durable powers of attorney for health care documents are common examples. Legal provisions vary from state to state.

Autonomy. 1) Derived from Greek words meaning "self rule." Referring to the patient's right of self-determination concerning medical care. Autonomy may be used in various senses including freedom of action, effective deliberation, and authenticity. It supports such moral and legal principles as respect for persons and informed consent. 2) Making decisions for oneself, in light of a personal system of values and beliefs.

Beneficence. The state or act of intentionally doing or producing good. The principal of beneficence involves duties to prevent harm, remove harm, and promote the good of another person. The obligation of health care professionals to seek the well-being or benefit of other patients. Duties of beneficence concern the welfare of others.

Competent. A legal concept that describes people who are able to make decisions for themselves. Minors are presumed to be incompetent, except under certain specified conditions. The corollary medical-ethical term is *decisional capacity*.

Confidentiality. The professional-client promise not to reveal information without consent.

Durable power of attorney for health care. An advance directive that goes into effect in the event that a patient who has completed such a document loses decisional capacity. Allows an individual to name a person(s) who is empowered to make health care decisions when the individual becomes incapacitated.

Emancipated minor. A teenaged minor, who is legally, independent of parental control and who can thus give informed consent to medical treatments.

Ethics committees. An interdisciplinary group that deals with conflicts of values in patient care in acute and long-term settings. Such committees discuss policy issues (e.g., regarding withholding and withdrawing of life-sustaining treatments).

Euthanasia. The act of either permitting a person to die or intentionally ending a person's life, generally rooted in motives of mercy, beneficence, or respect for patient dignity.

Informed consent. The legal and ethical requirement that no significant medical procedure can be performed until the competent patient has been informed of the nature of the procedure, risks and alternatives, as well as the prognosis if the procedure is not done. The patient must freely and voluntarily agree to have the procedure done.

Nonmaleficence. The state of not doing harm or evil; see also beneficence.

Privileged communication. Information communicated to an attorney, physician, spouse, or counselor that may not be revealed, even in court, without the consent of the person who made the statement.

Proxy consent. Voluntary informed consent given on behalf of another who is for some reason incapable of giving it for himself or herself.

(Howard University School of Medicine Program in Clinical Ethics, 2005)

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