

## Professional Liability and Medical Malpractice

### Course

Practicum in  
Health Science

### Unit IV

Ethical and  
Legal  
Responsibilities

### Essential Question

What are the  
ethical, moral,  
and legal  
standards  
expected of  
healthcare  
workers in  
today's society?

### TEKS

130.205 4(A),  
4(C)

### Prior Student Learning

Client Autonomy  
Patient's Rights

### Estimated time

2 – 4 hours

### Rationale

The health science student needs to know ethical behavior standards and legal responsibilities.

### Objectives

Upon completion of this lesson, the student will be able to:

- Identify legal terms utilized in healthcare; and
- Correlate how professional liability, privacy, confidentiality, and the elements of negligence relate to court cases on medical ethics and standards of care.

### Engage

Define Professional Liability and Medical Malpractice. Discuss the possible causes of malpractice, recent cases in the news media, and the responsibilities of a healthcare provider.

### Key Points

- I. Competent adults are liable, or legally responsible, for their own acts, both on the job and in their private lives.
  - A. Employers are liable for their employees in regards to
    1. Building and grounds – adequate upkeep to prevent injury
    2. Automobiles – if an employee uses their own car or their employer's car, the employer must be adequately insured in case of an accident.
    3. Employee safety – a comfortable and safe work environment
- II. As professionals we are responsible for our actions (or failure to act) under a reasonable standard known as the Standard of Care.
  - A. Professionals are held to a higher standard and may be held liable for negligence.
  - B. Healthcare workers must be careful in the duties they perform; if they perform duties commonly assigned to those with a higher level of training and expertise, they may legally be held to a higher standard of care.
- III. Privacy, Confidentiality, and Privileged Communication
  - A. It is a healthcare professional's ethical and legal duty to safeguard a patient's privacy.
  - B. Confidentiality is the act of holding in confidence information that is not to be released to unauthorized individuals.
  - C. Privileged communication is information held confidential within a protected relationship.
  - D. Medical office confidentiality should be maintained:

1. Do not release information to a third party without a signed consent.
    - a. When talking on the phone regarding test results, be sure no one else can hear.
    - b. When leaving a message on an answering machine, just tell the patient to call the office regarding their recent appointment.
  2. Do not decide confidentiality on the basis of your personal approval of the thoughts and actions of the patient.
- E. Confidentiality may be waived
1. If the patient sues the physician for malpractice
  2. If the patient signs a waiver to release information

#### IV. Tort of Negligence

- A. Unintentional tort of negligence is the basis for malpractice claims
1. Tort is a civil wrong committed against a person or property, excluding a breach of contract.
  2. Negligence is an unintentional tort alleged when one may have performed or failed to perform an act that a reasonable person would or would not have done under similar circumstances.
- B. Medical professional liability claims are classified in three ways:
1. Malfeasance – a performance of a totally wrongful and unlawful act
  2. Misfeasance – a performance of a lawful act in an illegal or improper manner
  3. Nonfeasance – a failure to act when one should have
- C. The four elements that must be present to prove a healthcare professional is guilty of negligence:
1. Duty – a person charged with negligence owed the duty of care to the victim.
  2. Derelict – a healthcare provider breached (failed to comply) the duty of care to the patient.
  3. Direct Cause – a breach of duty was the direct cause of the patient's injury
  4. Damages – monetary awards sought by the plaintiffs (patients) in the lawsuit where there is a legally recognizable injury to a person

#### V. Elements of a Lawsuit

- A. A patient feels he or she has been injured.
- B. A patient seeks the advice of an attorney.
- C. The attorney believes the case has merit, and requests copies of patient's medical records.
- D. Pleading Phase
  1. The patient's attorney files a complaint with the court.

2. A summons is issued by the court, and is delivered to the defendant.
  3. The defendant's attorney files an answer to the summons.
  4. A cross complaint is made and the patient files a reply.
- E. Interrogatory or Pretrial Discovery Phase
1. The trial date is set by the court.
  2. Pretrial motions may be made, such as a dismissal or amendment of the original complaint.
  3. A court order (subpoena) is issued requiring that a deposition (sworn testimony) be taken from a medical office employee. [Someone] may request an interrogatory, which is a written set of questions requiring written answers.
  4. A pretrial conference with the judge, where attorneys discuss the issues in the case
- F. Trial Phase
1. Jury selection
  2. Opening statements by both attorneys
  3. Witnesses take the stand
  4. Closing statements by both attorneys
  5. The jury's verdict
  6. The final judgment is handed down by the court
- G. Appeals Phase
1. Post-trial motions are filed.
  2. Appeal the case to a higher court.
- H. Nine out of ten lawsuits are settled out of court, but many times healthcare practitioners are asked to give testimony. There are two kinds of testimony:
1. Fact – these are only the actual facts the witness has observed.
  2. Expert – must have relevant education, skills, knowledge, and experience in order to be judged as an expert in the trial.

## VI. Alternative Dispute Resolution

- A. As court calendars become overcrowded, alternative dispute resolution has become increasingly popular. Alternative Dispute Resolution consists of techniques for resolving civil disputes without going to court.
- B. Methods used are arbitration and mediation:
1. Arbitration is a method of settling disputes where both parties abide by the decision of an arbitrator and the arbitrator is selected directly by both parties.
  2. Mediation is a method in which a neutral third party listens to both sides and resolves the dispute. The mediator does not have authority to impose a solution.

### Activity

- I. Student groups use the **court case packet** and identify if the court case involved liability, standard of care, privacy, confidentiality, privileged communication, negligence, or a combination of these. Present to class for discussion.

### **Assessment**

Successful completion of Court Case Packet

### **Test on Professional Liability and Medical Malpractice**

### **Materials**

#### **Court Case Packet**

#### **Key for Test on Professional Liability and Malpractice**

Internet Websites:

- American Health Information Management Association ([www.ahima.org](http://www.ahima.org))
- Physician's Committee for Responsible Medicine ([www.pcrm.org/](http://www.pcrm.org/))
- American Arbitration Association ([www.adr.org](http://www.adr.org))

*Law and Ethics for Medical Careers*, by Karen Judson and Sharon Hicks, CMA

*Medical Law and Ethics*, by Bonnie Fremgen, Prentice Hall

### **Accommodations for Learning Differences**

For reinforcement, the student will watch a Court TV program on medical malpractice, and write a documentation of events.

For enrichment, the student will use Internet web sites and identify sources that might be used by laypersons to check the credentials and malpractice records of physicians.

### **National and State Education Standards**

National Health Science Cluster Standards

HLC02.01 Communications

Health care workers will know the various methods of giving and obtaining information. They will communicate effectively, both orally and in writing.

HLC04.01 Information Technology Applications

Health care workers will use information technology applications required within all career specialties. They will demonstrate use as appropriate to health care applications.

HLC08.01 Ethics and Legal Responsibilities

Health care workers will understand the legal responsibilities, limitations, and implications of their actions within the health care delivery setting.

HLC08.02 Ethics and Legal Responsibilities

Health care workers will understand accepted ethical practices with respect

to cultural, social, and ethnic differences within the health care environment. They will perform quality health care delivery.

#### TEKS

130.205(c)(4)(A) appraise individual ethical and legal behavior standards according to professional regulatory agencies; and  
130.205(c)(4)(C) critique court cases related to professional liability and ethics.

#### Texas College and Career Readiness Standards

##### Cross-Disciplinary Standards:

I.A.1 Engage in scholarly inquiry and dialogue

I.A.2 Accept constructive criticism and revise personal views when valid evidence warrants

I.B.1 Consider arguments and conclusions of self and others

I.B.2 Construct well-reasoned arguments to explain phenomena, validate conjectures, or support positions

I.B.3 Gather evidence to support arguments, findings, or lines of reasoning

II.A.4 Identify the key information and supporting details

##### Social Studies Standards:

I.E.4 Identify and evaluate the sources and consequences of social conflict

I.F.2 Analyze ethical issues in historical, cultural, and social contexts

IV.A.3 Evaluate sources from multiple perspectives

##### English/Language Arts Standards:

II.A.5 Analyze the presentation of information and the strength and quality of evidence used by the author, and judge the coherence and logic of the presentation and the credibility of an argument

III.B.2 Participate actively and effectively in group discussions

## Test – Professional Liability and Medical Malpractice

Damages	Negligence	Liability
Tort	Confidentiality	Malfeasance
Breach	Nonfeasance	Standards of Care
Misfeasance		

1. \_\_\_\_\_ is the act of holding in confidence information that is not to be released to unauthorized individuals.
2. Being legally responsible for your own actions is called \_\_\_\_\_.
3. \_\_\_\_\_ is performance of a totally wrongful and unlawful act.
4. \_\_\_\_\_ is a civil wrong committed against a person or property, excluding breach of contract.
5. Failure to comply is called \_\_\_\_\_.
6. \_\_\_\_\_ is failure to act when one should.
7. Being responsible for our actions (or failure to act) under a responsible standard is \_\_\_\_\_.
8. Monetary awards sought by the plaintiff are \_\_\_\_\_.
9. \_\_\_\_\_ is performance of a lawful act in an illegal or improper manner.
10. \_\_\_\_\_ is an unintentional tort alleged when one may have performed or failed to perform an act that a reasonable person would or would not do under similar circumstances.

### Use your critical thinking skills to answer the questions that follow each of the case studies.

11. A trainee anesthesiologist ran out of oxygen before the operation was completed, causing the patient to suffer a fatal cardiac arrest.

This case was adjudicated as a strong medical malpractice case and was won by the plaintiff. Referring to the four Ds of negligence, explain why.

12. During an endoscopic retrograde cholangiopancreatography (ERCP), an inexperienced nurse injected the dye too forcefully and caused the patient to develop pancreatitis and other debilitating injuries.

The patient sued and won. Refer to the four Ds of negligence to explain the court's decision.

13. An on-call ophthalmologist, without seeing the patient, diagnosed his eye pain, sensitivity to light, and nausea as sinusitis. In fact, the patient had acute angle closure glaucoma, and lost sight in the eye.

When this case came to trial, the court found in favor of the patient/plaintiff. Explain the court's decision based on the four Ds of negligence.

## Professional Liability and Medical Malpractice KEY

1. Confidentiality
2. Liability
3. Malfeasance
4. Tort
5. Breach
6. Nonfeasance
7. Standard of Care
8. Damages
9. Misfeasance
10. Negligence
11. The anesthetist owed the patient duty of care that was breached by (direct cause) failing to make sure there was sufficient O<sub>2</sub> for the procedure. There was a legally recognized injury to the patient.
12. The nurse owed the patient duty of care that was breached when she used an improper technique in performing a procedure within the scope of her duties. The patient suffered an injury that influenced the court's decision.
13. The physician established duty of care to the patient by diagnosing over the phone. That duty breached the physician's failure to conduct a physical exam, which led to a misdiagnosis. The patient suffered a recognized injury.

## **Court Cases**

### **Minor's Informed Consent Not Necessary**

A Texas Physician was sued for failing to secure informed consent from a minor patient before performing an abortion.

In 1974 a 16-year-old girl's mother told her physician that her daughter was retarded and had been raped. The mother gave her written permission for her minor child to have an abortion, which the physician performed. The physician did not know that in reality the girl was not retarded and had not been raped. She had conceived the child with her boyfriend.

Sixteen years later the patient examined her medical records and realized that she had undergone an abortion. She sued the physician, claiming that she had not given informed consent for the procedure. In 1974 Texas did not require that a minor give informed consent for the procedure. Since the physician had obtained informed consent from a parent, as required by law at that time, a trial court held, and an appeals court affirmed, that he was entitled to summary judgment.

Powers v. WF Floyd. 904 SW2d 713 (Texas Ct. of App. May 10, 1995. rehearing overruled May 24, 1995)

### **Minor Says No to Surgery**

Believing they were acting in the best interests of a minor, a county health department in New York State tried to obtain the court's permission to seek surgery for a 14-year-old boy who had a cleft palate and upper lip (also called a harelip).

The boy's father would not consent to surgery for his son because he believed that forces in the universe would heal all ailments. Influenced by his father, the boy refused the offer of surgery for his condition.

The court ruled that the boy could not be forced to have surgery. He could turn down the procedure because his cooperation would be needed for the speech therapy that would follow. A majority of the judges saw less harm in letting him wait until he was an adult and could make the choice for himself, than in pursuing the surgery.

In the Matter of S. 309 NY 80 127 NE 2d 820 (1955)

## **Physician Sued for Abandonment**

A patient entered the emergency room of a hospital complaining of rectal bleeding, and was admitted as a patient of her regular attending physician. Two diagnostic procedures were completed and three more were scheduled. The patient refused to sign consent forms for the three procedures, saying she didn't want to be anesthetized. Her physician discussed these concerns with the patient and told her to sign the consent forms or sign herself out of the hospital. The physician told the patient he would release her from his services. At that time, the patient was given a list of other physicians she could contact. The patient selected another physician and discharged herself from the hospital. The patient charged the original physician with abandonment.

A superior court entered summary judgment for the physician. The case was appealed by the plaintiff, but the appeals court held that the physician was not guilty of abandonment. Supplying the patient, who was not in need of immediate attention, with a list of substitute physicians to replace the attending physician was a reasonable means of serving the professional relationship between a patient and an attending physician.

Miller v. Greater Southeast Community Hospital. 508 A2d 927 (DC Ct. App 1986)

## **Physician Sued for Breach of Contract**

A Minnesota appellate court ruled that a patient had a breach-of-contract claim against a physician who had published pictures of her without her consent.

The physician performed outpatient, same-day surgery on the patient's chin and nose, and photographed her before and after surgery. The medical center later published the photographs in a brochure. The patient was not identified.

The patient filed suit against the physician and medical center for invasion of privacy, intentional infliction of emotional distress, and violation of the Patient's Bill of Rights. She also alleged the breach of an implied contract by the physician.

On appeal, the court ruled that the patient had only a cause of action for breach of implied contract.

Stubbs v. North Memorial Center 448 N.W.2d 78 (Minn Ct. of App. Nov 14 1989)

## **Upset or Incompetent?**

Emotional upsets do not necessarily make a patient incompetent to consent to medical treatment. During a fight with his son, a Seattle man felt chest discomfort and thought he was having a heart attack. At the hospital, he was given four drugs, including a narcotic pain medication. The suspected heart attack was diagnosed as a muscle strain, but while he was hospitalized the man agreed to surgery on his nose. The nose surgery turned out bad, and the man sued, claiming that he had been in a drug-induced state and could not make an intelligent decision about having the nose surgery. If he had not been competent, then the man had not actually consented to the surgery and the surgeon committed assault.

A judge dismissed the case. The law presumed that the patient in this case had been competent because a legally competent person is one who can understand his or her illness, the proposed treatment, and the risks in either accepting or refusing it. The patient met these criteria.

Grannum v. Berard 70 Wash 2d 304 422 P2d 812 (1967) annot. 25 A.L.R. 3d 1443

## **No Breach of Contract by a Radiologist**

A Georgia appellate court ruled that a patient's claim that a radiologist breached an express warranty had been properly dismissed by a lower court.

The radiologist performed an arteriogram procedure which allegedly caused permanent injuries to the patient. The patient sued the radiologist for medical malpractice and breach of an express contract that he would not suffer any ill effects. The patient argued that the radiologist had stated the procedure would be routine and that he had nothing to worry about.

Affirming the dismissal of the claim based on breach of contract, the appellate court said the radiologist had not expressly warranted that the patient would suffer no ill effects.

Servias v. Philbrick 380 S.E.2d 496 (Ga. Ct. of App. March 10, 1989 rehearing denied. March 22, 1989. Ga. Sup. Ct. May 4, 1989)