Legal and Ethical issues in Health Care
Laws

- Laws are rules of conduct enacted and enforced by governments. Laws help protect people. Legal responsibilities are based on laws. All people have legal responsibilities, such as following traffic rules and paying taxes. Health care workers have specific legal responsibilities that help protect their patients, themselves, and their employers.
One type of law that affects health care workers is criminal law. Criminal law protects all citizens from people who pose a threat to society.
Criminal Law

• When a criminal law is broken, the government, or plaintiff, brings charges against the alleged offender, or defendant. Criminal law includes minor to serious offenses. These offenses may result in the following punishments:
  • Community service
  • Fines paid to the government
  • Loss of license
  • Probation
  • Imprisonment
  • Execution
Criminal Law

• Examples of criminal offenses committed by health care workers may include falsifying medical records, insurance fraud, practicing without the required license, misuse of drugs, stealing of drugs, abuse, and murder.
Civil Law

• Another type of law that affects health care workers is civil law. **Civil law focuses on disputes between people.**

• When a civil law is broken, the person who claims harm, or plaintiff, brings charges against the alleged offender, or defendant. Civil offenses are punishable by money paid to the plaintiff.

• Two types of civil laws are torts and contracts.
Civil Law- Torts

• A tort is a case in which a person is harmed because of another person's actions or failure to act. Specifically, a tort occurs if a health care worker does not meet the established standards of care. The following are types of torts:
  • Assault and battery
  • False imprisonment
  • Defamation of character
  • Invasion of privacy
  • Malpractice
Civil Law

Torts- Assault and Battery

• **Assault is intentionally threatening or attempting to harm a person.** For example, assault may occur when a patient refuses to have a blood test but a medical assistant *says* he is going to draw the patient's blood anyway.

• **Battery is intentionally touching another person without the person's permission, even if the contact does not cause harm.** For example, battery may occur when a patient refuses to have a blood test but a medical assistant *draws* the patient's blood anyway.

False imprisonment is intentionally violating a person's freedom. For example, if a geriatric assistant inappropriately restrains a patient without the patient's permission, the geriatric assistant may be guilty of false imprisonment. Or if a physician will not let a patient leave a hospital, the physician may be guilty of false imprisonment.

Health care workers are able to restrain patients without their consent if the patients are threatening their own safety or the safety of others. In such cases, a physician must deem the restraint necessary.
Civil law-torts-Defamation of Character

- Defamation of character is intentionally damaging a person's reputation by making false statements about the person. Defamation can be either libel or slander. *Libel is publishing false text or images. Slander is speaking false words.* For example, if a licensed practical nurse reports that a wife is being abused by her husband when, in fact, she is not, the nurse may be guilty of defamation.
Civil Law- Torts- Invasion of Privacy

• **Invasion of privacy** is intentionally interfering with a person's right to be left alone. Examples of invasion of privacy committed by health care workers may include unnecessarily exposing a patient, using a patient's name or picture without the patient's permission, and breaching confidentiality of a patient's medical information. For example, invasion of privacy may occur when a physician uses pictures of a patient before and after treatment in a pamphlet without the patient's permission.
Civil Law- Torts- Negligence

• **Negligence** is unintentionally harming a person by acting in an improper way. In other words, if people do not act in a way that a reasonable person in their situation would, they are guilty of negligence.
Civil Law- Torts- Malpractice and Scope of Practice

- **Malpractice** is professional negligence. It is the most common charge against health care workers. Malpractice occurs when health care workers unintentionally harm patients as a result of not following their profession's scope of practice. **Scope of practice is what health care workers should and should not do according to their profession.** Each health care profession has a scope of practice. Each state has laws that define the scope of practice for each health care profession, but each state's laws share general characteristics.
Scope of Practice Examples

- Scope of practice requires that health care workers know the duties and limits of their profession. The scope of practice for nurse assistants, licensed practical nurses, and registered nurses includes these areas:
  - Qualifications
  - Identifying health problems
  - Planning care
  - Implementing care
  - Evaluating care
  - Supervising and delegating care
  - Managing nursing
  - Teaching nursing
Malpractice Examples

• Recall that scope of practice requires that health care workers know the duties and limits of their profession. Specifically, health care workers need to know how to perform their job correctly, according to their profession's standards of care. If health care workers do not perform their job in a way a reasonable professional in their situation would, they violate scope of practice and are guilty of malpractice. For example, a surgical technician does not wash his hands before a surgery. Surgical technicians are expected to always wash their hands before surgery. Therefore, the surgical technician may be guilty of malpractice.
• *If health care workers perform tasks outside of their duties, they violate scope of practice and may be guilty of malpractice.*

  • For example, a registered nurse gives a patient a sample of a medication without a physician's order. Registered nurses are not authorized to give medications to patients without a physician's order. Therefore, the nurse may be guilty of malpractice.
Malpractice Exception

- Patients must have **serious injuries** in order for health care workers to be guilty of malpractice. For example, a nurse assistant leaves a scalpel on an examination table. A patient cuts herself on the scalpel, but the cut is minor. Therefore, the nurse assistant is not guilty of malpractice.
A contract is a voluntary agreement between two or more people. A contract has three parts: offer, acceptance, and consideration. For example, a physician offers services. Then, a person accepts the physician's offer by being examined and treated by the physician. Finally, the patient pays the physician for the services.
Breach of Contract

• If a contract is not performed according to the agreement, the contract is breached. For example, a contract is breached if a health care provider does not provide the agreed-upon services or provides improper care. A contract is also breached if a patient does not pay for the services.
Implied or Expressed Contract

• There are two types of contracts:
  
  • Implied
  
  • Expressed
Implied Contracts

- An **implied contract** is an agreement that is understood without being stated in words or writing. An example of an implied contract is when a physician prescribes a medication and a patient takes the medication. In this case, it is implied that the patient agrees to the treatment.
Expressed Contracts

• An **expressed contract** is an agreement that is specifically and clearly stated. The agreement may be made either in words or writing. An example of an expressed contract is when a physician recommends surgery and a patient signs a consent form giving her permission. In this case, the patient explicitly agrees to the treatment.
Contracts and disabilities

• All people entering into a contract must be free of legal disability. **Legal disability** includes these types of people:
  • Minors under the age of 18
  • Incompetent people, such as those with mental disabilities or psychiatric illness or under the influence of alcohol or drugs
  • Semiconscious or unconscious people
If a person entering into a contract is a non-English speaker, a translator must be used. If a person is illiterate or speech- or hearing-impaired, assistance should be used.
Informed Consent

- In terms of health care contracts, many procedures and tests require informed consent. **Informed consent** has two parts.

  - The first part of informed consent is a clear explanation of a procedure or test. This also includes the procedure or test's benefits, its risks, and the consequences of not performing the procedure or test as well as alternative options.

  - The second part of informed consent is the permission given to perform the procedure or test by a competent and voluntary patient. Depending on the procedure or test, informed consent may be stated verbally or in writing. Patients have the right to withdraw consent at any time.
Exceptions to Informed Consent

• One exception to informed consent is emergencies. In emergencies, when patients are not able to make decisions or communicate, consent can be implied.

  • *It is assumed that in critical situations patients would give consent if they were able. For example, it is implied that an unconscious heart attack victim would consent to angioplasty.*
Exceptions to Informed Consent, cont’d

• Another exception to informed consent may be minor procedures and simple tests with minimal risks and consequences if not performed. Such procedures and tests may include general care, respiratory cultures, drawing blood, and X-rays.

• States may differ in their exceptions to informed consent. Health care workers must comply with the laws in their state
Legal and Ethical Issues - Privacy

• These days, all information in a patient's medical record is private. In most cases, it is illegal to show this private information to anyone without that patient's permission. However, medical records were not always private. In the past, employers could use medical records as a basis for refusing to hire an individual or for terminating employment. In addition, insurance companies could access medical records and use the information for financial gain.
Privacy- HIPAA

• The federal government decided that privacy legislation must be enacted. In the 1970's, Congress began working to reform many aspects of the health care industry. By 1996, the **Health Insurance Portability and Accountability Act (HIPAA)** was passed in the House and Senate and was signed by the President. HIPAA became law, and many rules were set in place to protect patients and their personal health information.
The Purposes of HIPAA

• There are many regulations involved in HIPAA. However, the four main purposes can be summarized as:
  • Privacy of Health Information
  • Security of Electronic Records
  • Administrative Simplification
  • Insurance Portability
Privacy of Health Information

- According to HIPAA, a patient's health information is private. Before a patient's information is released to anyone, such as a family member or another physician, the patient must give written authorization.

- The privacy regulations are outlined in a section of HIPAA called the Privacy Rule. The Privacy Rule provides detailed instructions for handling and protecting a patient's personal health information.
Electronic Medical Records

• In recent years, there has been a trend in health care facilities to convert all medical records from paper form to electronic form. **Electronic medical records (EMR)** help the health care industry to operate more efficiently. However, EMR creates many security and privacy issues. As a result, HIPAA provides regulations to make sure that confidential records are kept secure. This is called the **Security Rule**.
Security in Electronic Medical Records

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Security Rule Safeguards

• According to the Security Rule, health care facilities must provide three types of safeguards when using electronic records:
  – Physical
  – Technical
  – Administrative
Physical Safeguards for EMR

• **Physical Safeguards** include rules for providing a safe and hazard-free environment in which to store medical records. For example:
  
  • Doors should be locked.
  
  • Computer server rooms should be locked and accessed by authorized personnel only.
  
  • Any paper records should be stored in locked, fireproof cabinets
Technical safeguards for EMR

• **Technical Safeguards** include rules for protecting electronic information. For example:

  • All medical records should be password-protected, and passwords should be updated regularly.

  • Information that is transmitted electronically should be encrypted.

  • All computer systems must have effective anti-virus software
Administrative Safeguards

- **Administrative Safeguards** include rules for managing employees who have access to protected health records. For example:
  - Policies must be in place regarding which employees are allowed to access information.
  - All employees should complete security awareness training.
HIPAA - Insurance Portability

- The **Health Insurance Access, Portability, and Renewability** section of HIPAA was created to provide continuous insurance coverage for people when they change or lose a job. A change in jobs usually results in a change in health insurance. HIPAA prevents health insurance companies from denying or limiting coverage for people who have pre-existing conditions.
Privileged Communication

- **Privileged communication** is information that is shared within a protected relationship. Such relationships include physician and patient, attorney and client, and clergy and counselee. The confidentiality, or privacy, of privileged communication is protected by law. In other words, under most circumstances, privileged communication cannot be disclosed.
HIPAA's Privacy Rule

- Specifically, the Privacy Rule established nationwide standards that are used to protect private patient information. Under most circumstances, it may not be disclosed to anyone else without the patient's permission. Violations of the Privacy Rule may include civil and criminal penalties, such as fines and loss of license.
Protected Health Information

- **Protected health information (PHI)** is any individually identifiable health information about a patient.
  - patient's health status
  - provision of health care
  - payment for health care that also identifies the patient's name
  - social security number, address, telephone number, date of birth, etc.
Confidentiality

• **Confidentiality** is using discretion when handling protected health information. So then, patients have the *right* to the privacy of their health information, and health care employees have the *responsibility* to keep a patient's health information confidential.
Disclosure

• **Disclosure** is the release, transfer, or provision of access to protected health information. *Patients must give permission for their health information to be disclosed to other people, including other doctors, family members, friends, health insurance companies, employers, and attorneys.*
Authorization

• **Authorization** is the permission that patients give in order to disclose protected health information. Several elements must be included in formal authorization.
Authorization Rules

• Authorization must be in writing and in plain language.
• Authorization must name the entities that are allowed to receive health information. **Entities** include health care providers, health insurance providers, and health care clearinghouses, who handle insurance claims.
• Authorization must state the people that are allowed to view health information, such as a spouse or other relatives.
• Authorization must state the extent of health information that approved entities and people are allowed to access.
• Authorization must include a statement that patients have the right to refuse authorization. As a result, health care providers have the right to limit treatment to that patient.
• Authorization must have an expiration date.
• Authorization must be signed and dated by the patient.
The Privacy Rule
Patient Rights

The Privacy Rule grants six rights to patients that allow them to control how their protected health information is used. These rights include:
Written notice

• **Right to Notice of Privacy Practices:** At a patient's first visit to a health care facility, the patient must be given a written copy of the facility's rules and the patient's rights regarding protected health information.
Right to request restrictions

- Right to request restrictions on certain uses of protected health information: Patients may select which items in their medical records should not be disclosed. For example, a patient may restrict an item in the medical record if the previous health condition is no longer applicable or if the patient feels that it will cause embarrassment.
Confidential communications

• **Right to request confidential communications**: Patients may request reasonable, alternative forms of communication. For example, a patient may ask to be contacted at a work phone number instead of a home phone number.
Access to PHI

• Right to access a copy of protected health information: With the exception of psychotherapy notes, patients may access, inspect, and obtain a copy of their medical records. Typically, the request must be made in writing and acted on within 30 days. Most facilities will charge a fee to patients to obtain copies of their medical records.
Right to request amendment

• **Right to request an amendment of protected health information:** Patients may request a change to their medical record if they feel that something is incorrect. The requests must be made in writing. Facilities must respond in a timely fashion. In some cases, the requests may be denied.
Accounting of disclosures

- **Right to receive an accounting of disclosures of protected health information**: Patients may request a record of all the instances in which their personal information was disclosed. Each item in the record must include the date of disclosure, the name of the entity or person to which information was disclosed, a description of the information that was disclosed, and the reason for disclosure.
Disclosure without Authorization

• The Privacy Rule provides six situations for when disclosure of protected health information is allowed without authorization.
Disclosure without authorization

- When a patient requests to see his or her own personal information: Patients may have access to their own medical record at any time.

- When permission to disclose is obtained: If a patient is admitted to the hospital, the patient will be asked if his or her name may be listed in the directory. Then, if any guests request to see the patient by name, the guests can be directed to the correct room.
Disclosure without authorization

• When information is used for treatment, payment, and health care operations: If a patient is referred from one doctor to another doctor, these two doctors may share the patient's health information.

• When disclosures are obtained incidentally: Incidental information is information that is obtained accidentally, even when privacy precautions are taken. For example, if a doctor discusses a medical condition with a patient behind closed doors and someone outside the door overhears, this is considered incidental.
Disclosure without authorization

• **When information is needed for research:** Some health data may be released to researchers or for public health purposes. In these cases, identifying information, such as names, social security numbers, and addresses, has been removed from the data.
Disclosure without Authorization
Public Safety

• The final situation for when disclosure of protected health information is allowed without authorization occurs when there are legal or public interest issues involved. Some examples of legal or public interest issues include:
  • When information in a medical record must be provided to a court of law
  • When law enforcement needs medical records to identify a suspect or missing person
  • When reporting cases of abuse, neglect, or domestic violence
  • When a patient contracts a serious communicable disease, such as tuberculosis
  • When births and deaths occur
  • When information is needed to facilitate organ transplants from deceased donors
Medical Records

Medical records are a form of privileged communication.

• Personal information, such as full name, phone number, address, work number and address, birth date, social security number, and marital status
  • Medical history
  • Description of symptoms
    • Diagnoses
    • Treatments
  • Prescriptions and refills
• Records of patient's telephone calls
  • Name of legal guardian
  • Name of power of attorney
• Notes about copies of medical records
Ownership of Medical Records

- **Medical records belong to health care providers**, but patients have the right to see and obtain a copy of their records. The exception to this is patients with mental illness. This is because knowledge of their medical information may make such patients' condition worse. In addition, if a patient's employer or prospective employer pays for a job-related physical examination, the employer, not the patient, has the right to see and obtain a copy of the records. In this case, the employer must give permission for the patient to see and obtain a copy of the records.
Maintenance of Medical Records

• Medical records are legal documents. Therefore, they must be properly maintained. Specifically, medical records must be complete, legible, and timely. In addition, all information in records must be objective and the information must be initialed and dated. Subjective observations made by health care workers should never be included. On the other hand, subjective statements made by patients may be included. These should be recorded in patients' exact words and quotation marks should surround them.
Errors

• Errors should never be erased or covered with correction fluid. Instead, a single line should be drawn through an error so that the error is still readable. And the word "error" should be written and initialed. An explanation of the error may be included. Then, correct information may be inserted, initialed, and dated.

• Mr. Jones weight was 358 (error) 258lbs.
Maintaining records

• Records should also be kept for at least two to seven years, according to federal and state laws. When records are destroyed, they should be shredded.
Advance Directives

• People have the right to make decisions regarding their health care. **Advance directives** are legal documents that allow people to state what medical treatments they want or do not want in the event that they are unable to make decisions or communicate because of severe illness or injury.
A living will is a document that allows people to state what medical treatments they want or do not want to prolong their life in the event that they are unable to make decisions or communicate because of severe illness or injury. For example, a living will may state that people do or do not want any of these treatments:

- Surgery
- Blood transfusion
- Kidney dialysis
- Cardiopulmonary resuscitation
- Artificial respiration
- Artificial nutrition and hydration
- Pain medication
Living Will, continued

• For example, a man's living will states that, for religious reasons, he does not want to receive blood transfusions. Several years later, he becomes seriously ill and loses consciousness. The man's doctor recommends a blood transfusion. Because of the man's living will, the doctor cannot order the transfusion.

• In addition, a living will may state that people do or do not want to have an autopsy or donate their organs.

• A living will must be signed when a person is competent, and it must be witnessed by two adults who will not benefit from the person's death.
Durable Power of Attorney for Health Care

- A durable power of attorney for health care is a document that allows a person, a principal, to give another person, an agent, the right to make decisions regarding the principal's health care if the principal is unable to make decisions or communicate because of severe illness or injury.
Rights and Responsibilities of Agent

• An agent may be a person's relative, friend, or any other adult selected by the principal. An agent has the following rights and responsibilities:
  • Have access to medical records
  • Allow or deny medical treatments
  • Hire or dismiss health care providers
  • Spend or withhold funds for health care
Durable Power of Attorney continued.

- A durable power of attorney must be signed by the principal and the agent, and it must be witnessed by at least one adult.
- In addition, a living will outweighs power of attorney. In other words, a living will is followed even if an agent does not agree with a principal's decisions.
Uniform Anatomical Gift Act (UAGA)

• The Uniform Anatomical Gift Act (UAGA) of 1968 allows people to donate their body or parts of their body after death for transplantation or medical research.
  – The act recognizes the legal status of people's permission.
  – If people do not indicate their decision prior to death, the act also recognizes the legal status of an agent's permission in the case of durable power of attorney for health care.
  – In the absence of power of attorney, the act recognizes the permission of a deceased person's closest living relative, guardian, or other authorized person.
The Patient Self-Determination Act states that health care providers must:

• Tell adult patients of their rights to make decisions regarding their health care and to have advance directives
• Assist in preparing advance directives
• Document patients' decisions regarding health care and any advance directives in their medical record
• Implement patients' decisions regarding health care and any advance directives
• Never discriminate against patients based on whether or not they have advance directives
• Educate staff and the community on advance directives
Human Rights

- **Human rights** are the basic, fundamental rights that belong to all people. They include the rights to freedom, equality, justice, and peace.
Client Rights

- **Client rights** are the rights that people are entitled to when they are in a relationship with a professional, such as an attorney or physician. As clients, patients have specific rights.
The Patient’s Bill of Rights

• The Patient's Bill of Rights lists patients' rights that are honored by health care providers. The Patient's Bill of Rights states that patients have a right to:
  • Information disclosure
  • Choose providers
  • Emergency services
  • Make health care decisions
  • Respectful treatment
  • Privacy
  • Make a grievance
• All states have adopted a version of the Patient's Bill of Rights that health care providers are required to follow. Health care workers must comply with the laws in their state.
The Right to Information Disclosure

• The Right to Information Disclosure refers to the responsibility of health care providers to give accurate information about themselves to patients. For example, a hospital must reveal that it has a relationship with a research institution.
The Right to choose Providers

• The Right to Choose Providers means that patients are able to choose their health care providers. Just as important, though, patients must be able to choose providers who are able to provide high-quality care. In other words, patients with serious medical conditions must have access to specialists.
The Right to Choose Providers, cont’d

• For example, Traci was seeing her primary care physician for back pain. When her primary care physician was unable to treat the pain, Traci made an appointment with a neurologist.
The Right to Emergency Services

• The Right to Emergency Services gives patients the right to receive emergency care anywhere. This means that patients can go to an emergency room outside of their health care plan's network without having to get authorization or pay additional costs.

• For example, the Lehr family was on vacation in another state. When their toddler Danny became ill, they took him to the local emergency room. They had to pay the same amount as if they had taken Danny to the emergency room where they live.
The Right to Make Health Care Decisions

- The Right to Make Health Care Decisions refers to the partnership between patients and their health care providers. Patients have the right to make decisions regarding their health care. In order to make these decisions, though, they must be informed.
The Right to Make Health Care Decisions, cont’d

- Physicians must give patients correct, complete, and understandable information concerning their diagnosis, treatments, and prognosis. And, they must answer any questions patients may have. After patients have been given information, they are able to make educated decisions.
Patient's have a right to have Advance Directives, such as a Living Will and Durable Power of Attorney for Health Care. Patients also have the right to donate their body or parts of their body after death for transplantation and medical research.
The Right to Respect

• The Right to Respect means patients must receive considerate care and be treated with dignity. They should never be discriminated against based on race, color, religion, sex, nationality, disabilities, age, or socio-economic status. Nor should they ever be abused, including being unnecessarily restrained.
The Right to Privacy

• The Right to Privacy ensures that patients' medical information is confidential. Specifically, consultations, examinations, and treatments are to be performed so others cannot overhear or observe. And, health care providers cannot disclose privileged communication, including medical records, bills, and health insurance information, without patients' permission.
The Right to Make a Grievance

• The Right to Make a Grievance gives patients the right to make a complaint about their health care. For example, Jenn delivered her baby at 12:25 AM. After settling into her room, she was very hungry, but the hospital cafeteria was closed. Jenn made a complaint that she wasn't given any food until 7:00 AM. Another example is Mr. Ruiz. Mr. Ruiz's physician recommended a test to diagnose Mr. Ruiz's heart problem. The test, though, is not covered by Mr. Ruiz's health plan. Mr. Ruiz made an appeal that his health insurer cover the test.
The Right to Make a Grievance

- The Right to Make a Grievance also ensures that health care providers respond to patients' grievances in an objective and prompt manner. In addition, providers must inform patients of resources that are available to help them make grievances.
Patient Responsibilities

• In addition to patient rights, patients also have responsibilities. For example, they have the following duties:
• To give complete and truthful information to their physicians in order to reach a correct diagnosis and the best treatment
• To ask for any information needed to make decisions regarding their health care
• To inform their physicians of any advance directives
• To communicate acceptance of a treatment recommended by their physicians
• To follow their physicians' instructions regarding agreed upon treatment
• To cooperate with health care workers
• To respect the rights of health care workers, other facility personnel, other patients, and visitors
• To conduct themselves within the health care facility's rules
• To pay the charges for all services provided either through their health insurer or themselves
Rights VS Responsibilities

• Information disclosure
• Choose providers
• Emergency services
• Make health care decisions
• Respectful treatment
• Privacy
• Make a grievance

• To give complete and truthful information to their physicians in order to reach a correct diagnosis and the best treatment
• To ask for any information needed to make decisions regarding their health care
• To inform their physicians of any advance directives
• To communicate acceptance of a treatment recommended by their physicians
• To follow their physicians' instructions regarding agreed upon treatment
• To cooperate with health care workers
• To respect the rights of health care workers, other facility personnel, other patients, and visitors
• To conduct themselves within the health care facility's rules
• To pay the charges for all services provided either through their health insurer or themselves
OBRA

• The Omnibus Budget Reconciliation Act (OBRA) of 1987 includes many regulations regarding long-term health care. As a result, in addition to patients' rights, residents in long-term health care facilities have additional rights. These rights are referred to as the Residents' Bill of Rights.
The Resident’s Bill of Rights

• To be properly sheltered, fed, clothed, groomed, and cared for
• To live in a safe and clean environment
• To have and use personal possessions in keeping with safety requirements and other residents' rights
• To share a room with their spouse, if both are residents
• To consult with other residents in private and without interference
• To use a telephone in private and to be able to send and receive mail
Resident’s Bill of Rights, cont’d

• To have access to immediate family
• To refuse and receive visitors of their choice and to consult in private and without interference
• To manage their own personal finances or to authorize the facility to manage their affairs for them while being able to examine their account at any time
• To pursue social, cultural, religious, political, and community interests and activities
• To choose their own physicians and pharmacies
Resident’s Bill of Rights, cont’d

• To be free from mental and physical abuse, including inappropriate restraint and exploitation
• To voice grievances and recommend changes without fear of retaliation
• To expect reasonable continuity of care
• To be discharged or transferred only for medical reasons, their own or other residents' welfare, or nonpayment
• To be informed of available care options if the facility's care is no longer appropriate
Workplace Liability

• **Liability** refers to being legally responsible for causing harm. Health care workers are liable if they commit a criminal offense. They are liable if they do not meet the established standards of care. And they are liable if they breach a contract. If health care workers cause harm, liability may extend beyond them.
Liability

- **Personal liability** refers to health care workers being responsible for causing harm.

- **Supervisory liability** refers to supervisors of health care workers being responsible for workers causing harm. Supervisors are liable because subordinates are expected to work according to the supervisor's management, and the supervisor is responsible for providing adequate supervision.
Liability, cont’d

• **Employer liability** refers to employers of health care workers being responsible for workers causing harm. Employers are liable because employees are expected to follow the employer's policies and practices. And the employer is responsible for hiring qualified personnel, providing an appropriate environment, and providing adequate supervision.
Reducing Workplace Liability

• There are several ways liability can be reduced in health care settings. These include following policies and procedures, keeping proper documentation, filing event reports and keeping anecdotal records, using problem solving, and applying risk management.
Reducing Workplace Liability
Policies and Procedures

• To reduce liability, health care workers should follow their facility's policies and procedures. Policies are the principles that direct the facility's activities. Policies state what the facility does. Procedures are the methods the facility uses to carry out its policies. Procedures explain how the facility operates.
Reducing Workplace Liability

Documentation

• To reduce liability, health care workers should keep *proper documentation*. In other words, they should properly record all aspects of patient care, including maintaining patients' medical records.
Reducing Workplace Liability Documentation

• IF health care providers warn patients of a potential danger and patients ignore the warning, the patients, not the health care providers, are responsible for any injury. Health care workers should be sure to document if patients disregard such warnings.
Reducing Workplace Liability

Event Reports

• To reduce liability if accidents or violations occur in health care facilities, health care workers must file event reports. **Event reports** include the following information:
  • Who was involved in the event
  • What occurred
  • When it occurred
  • Where it occurred
  • What actions were taken
  • Statements by any people who were harmed as a result of the event
  • Statements by any health care workers who were involved in the event
  • Statements by any witnesses
Reducing Workplace Liability

Anecdotal Record

• In addition to filing event reports, if accidents or violations as well as unusual or noteworthy incidents occur in health care facilities, health care workers should keep anecdotal records. **Anecdotal records** are personal accounts of events. Health care workers hold anecdotal records in their own possession.
The Problem Solving Method

• To reduce liability when faced with a health care issue to which there is no clear resolution, health care workers should use problem solving. The problem solving method is made of six steps:
The Problem Solving Method

• Identify the problem:

• What is the basis of the problem? What is causing the problem?
The Problem Solving Method

• Identify the objective that must be achieved:
  
  • What is the goal? What must be accomplished? What is the big picture?
The Problem Solving Method

• Identify the circumstances that affect the problem:
  • What are the facts? What is preventing the goal or task from being accomplished?
The Problem Solving Method

• Name all possible solutions:

• How might the problem be eliminated? How might the goal be adapted?
The Problem Solving Method

• Make and implement a plan:
  • Which solution will be the most effective? Is the solution reasonable?
The Problem Solving Method

• Evaluate the results:

• Did the solution solve the problem? Would another plan have worked better? Should the solution be repeated or changed?
The Problem Solving Method
Example

1) Identify the problem:

2) Identify the objective that must be achieved:

3) Identify the circumstances that affect the problem:

4) Name all possible solutions:

5) Make and implement a plan:

1. An elderly patient with severe dementia in a long-term care facility is not eating enough.

2. The patient's care should promote her health and well-being.

3. Because of her dementia, the patient is unable to make decisions, and she has no advance directives. She also has no family. Therefore, the facility must decide whether or not to implement artificial nutrition.

4. The facility can choose to insert a feeding tube in the attempt to provide adequate nutrition and prolong the patient's life. Or the facility can choose not to insert a feeding tube in order to preserve the patient's pleasure of eating as well as being hand fed by a person as opposed to a machine.

5. The facility chooses to insert a feeding tube.
The Problem Solving Method

• Evaluate the results:

• The feeding tube agitates the patient so she pulls it out. As a result, the facility restrains the patient and reinserts the feeding tube. The restraints upset the patient so the facility sedates her. The facility reconsiders the patient's well-being. It then decides to remove the patient's feeding tube and return to hand feeding.
Risk Management

• To reduce liability, health care facilities should apply risk management. **Risk management** is a process of identification, evaluation, and prevention. In other words, risk management first identifies harm to patients, staff, and visitors. Then it evaluates this information. Following this, it uses the results to prevent predicted harm. As a result of preventing harm, risk management reduces liability and loss to health care facilities.
Laws vs. Ethics

- **Laws** are rules of conduct enacted and enforced by governments. **Ethics** are rules of proper conduct among a group of people, such as a religion or profession.
Morals

• **Morals**, also known as personal ethics, are an individual's personal values. Morals are reflected in people's personal beliefs about what is right and wrong conduct.
Ethic and Moral Conflict

• Ethics and morals may conflict, especially in health care settings. For example, pharmacists are to respect patients' rights to make decisions concerning their health care. A patient gives a pharmacist a prescription for birth control. The pharmacist, though, objects to dispensing birth control on the ground that birth control goes against his moral beliefs.
Code of Ethics

• A **code of ethics** is a list of written statements describing proper conduct for a group of people. The code directs the behavior of the people belonging to the group. And, it directs the people's decisions when faced with ethical problems.
Code of Ethics

- A code of ethics for health care workers includes the following behaviors:
- **Autonomy** - Health care workers respect patients' dignity and rights, including their right to make decisions regarding their health care.
- **Fidelity** - Health care workers care for patients according to their profession's scope of practice.
- **Beneficence** - Health care workers promote patients' health and well being.
- **Nonmaleficence** - Health care workers refrain from harming patients.
- **Veracity** - Health care workers communicate with patients truthfully.
- **Confidentiality** - Health care workers maintain confidentiality of patients' health information.
- **Justice** - Health care workers treat patients equally and without discrimination.
Professional Codes of Ethics

• Associations for many health care professions have established specific codes of ethics. Examples include the Code of Ethics of the American Association of Medical Assistants, the American Nurses Association, the American Medical Association, the American Dental Hygienists Association, the American Dental Association, and the American Pharmacists Association. Health care workers should become aware of their profession's code of ethics.
Ethical and Bioethical dilemmas

- **Ethical dilemmas** occur when moral beliefs conflict.
- **Bioethical dilemmas** are dilemmas that involve health care and biological sciences. For example, euthanasia is a bioethical dilemma. Euthanasia is the act of painlessly ending the life of a terminally ill patient at the patient's request due to intense suffering. The moral beliefs in conflict are that ending people's lives is wrong but that diminishing people's suffering and people's right to make decisions regarding their health are right.
Bioethical Dilemmas

• The following are other bioethical dilemmas:
• Genetic testing, gene therapy, somatic (adult) stem cell research, embryonic stem cell research, fetal tissue research, and cloning
• Organ donation and selection of transplant patients
• Xenotransplantation
• Withholding or withdrawing of life support
• Marijuana for pain relief
• Experimental treatments
• Human research subjects
• Animal testing
• Birth control, emergency contraception, and abortion
• Artificial insemination, in vitro fertilization, frozen embryos, and surrogate mothers
• Managed health care and access to health care
• Even if health care workers feel strongly about bioethical dilemmas, they must respect patients' right to their own opinions