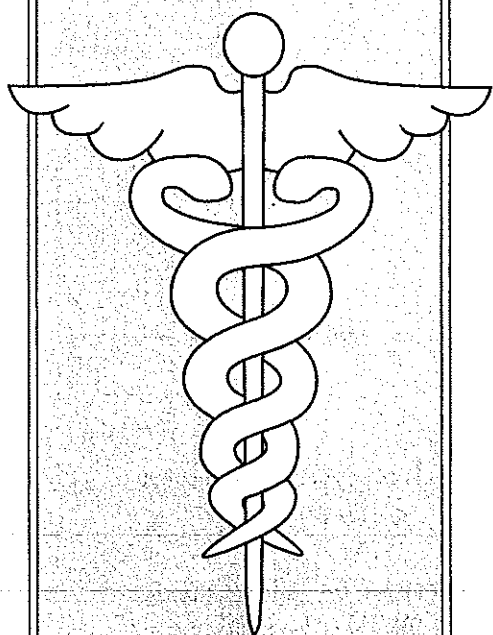


**Long Term Care
Network,
A Division of
Primedia Healthcare**

Ethical and Legal Considerations for CNAs

EDA 311-0135



LTCN™
Long Term Care Network

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INTRODUCTION

Knowledge of legal concepts enables caregivers to protect residents and to perform their jobs appropriately. This program discusses the legal system, basic legal concepts, and legal issues related to resident care.

LEARNING OBJECTIVES

Upon completion of this activity, the learner should be able to:

1. differentiate the two types of law.
2. review basic legal concepts.
3. discuss legal issues related to resident care.

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This syllabus is designed to be used in conjunction with video program EDA 311-0135 by the Long Term Care Network, a division of PRIMEDIA Healthcare. PRIMEDIA Healthcare is a division of PRIMEDIA Workplace Learning.

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ETHICAL AND LEGAL CONSIDERATIONS FOR CNAs

THE LEGAL SYSTEM

The legal system is governed by laws. The courts oversee the legal system and process individual cases according to the laws.

Recently, the legal system has processed an increasing number of lawsuits and defendants have won higher and higher amounts of money as compensation for damages. As a result, the number of cases and defendants has increased dramatically.

Long term care organizations are affected by this trend. Many residents and families have sued long term care organizations, and many of these defendants have won large monetary awards ranging into the millions.

TWO TYPES OF LAW

CRIMINAL LAW

Criminal law involves a crime against a person or a person's property. Murder and robbery are primary examples of criminal law. Persons who commit crimes are subject to imprisonment. Larceny, or theft, is a crime, no matter how small the object.

A nursing assistant who steals money or personal items from a resident commits a crime and is subject to criminal law. Helping another person steal is also a crime and is known as *aiding and abetting*.

CIVIL LAW

Civil law governs relationships between people. For example, civil law governs a caregiver's relationship with a resident. A resident or family can attempt to right a personal wrong in court. Most cases against long term care organizations arise from civil law disputes.

SUBPOENA

A subpoena is a court order for a person to appear as a witness before the court or to provide a particular document before the court. A nursing assistant can be summoned to serve as a court witness in a civil suit.

TORTS

A crime that breaks a civil law is known as a *tort*. A tort may result in a trial in which an injured party is awarded compensation for damages.

INTENTIONAL TORTS

An *intentional tort* is an intentional, or purposeful, action that harms a person or a person's reputation. The following are intentional torts:

- ❖ Defamation – harm to a person's reputation by words written or spoken.
- ❖ Assault – an intentional attempt or threat to touch another person without consent.
- ❖ Battery – touching another person without consent; residents have the right to refuse treatment unless judged incompetent, insane, or a threat to themselves or others.

- ❖ False imprisonment – restraining a person without his or her consent; placing a resident in protective devices without obtaining the person’s consent is false imprisonment.
- ❖ Discrimination – treating people differently because of their skin color, age, religious beliefs, or culture.

UNINTENTIONAL TORTS

An *unintentional tort* is harm that results to a person even though no harm was intended.

Negligence involves harm to a person or a person’s property. Harm can result if a nursing assistant neglects to do something he or she was taught. For example, negligence occurs when a nursing assistant does not answer a resident’s call light.

Malpractice, another unintentional tort, results when a caregiver fails to provide a professional service for which he or she was trained. For example, a nursing assistant assigned to an immobile resident is responsible for turning the resident every 2 hours, or as often as training requires. If failure to turn a resident regularly results in pressure ulcers, a resident or family may sue. Also, a nursing assistant who performs a procedure for which he or she is not trained, such as regulating an IV line, commits malpractice.

LIABILITY AND RESIDENTS’ RIGHTS

Although no action can absolutely prevent lawsuits, it is possible to help prevent them. Each resident has certain rights. Caregivers are liable, or legally responsible, for their actions and are responsible for protecting residents’ rights. These rights are based on a document by the American Hospital Association known as A

Patient’s Bill of Rights. Respecting these rights and meeting residents’ needs in a caring manner helps protect liability, which helps prevent lawsuits.

RESIDENT RIGHTS

Self-Determination. Residents have the right to determine their own health care. In most states, the *Patient Self-Determination Act* allows individuals to exercise control over their future healthcare by completing documents known as *advance directives*. A *Living Will* specifies acceptance or refusal of future treatments. In another type of advance directive, a *Durable Power of Attorney for Healthcare*, a resident can designate another person to make healthcare decisions if he or she becomes incompetent (Aiken, p. 108).

If a resident is incompetent, caregivers often follow the decisions of a guardian or a close family member. Family members’ decisions do not legally replace a resident’s right to make personal care decisions and do not supersede advance directives (Aiken, p. 110).

Considerate and Respectful Care. Showing residents consideration and respect can also prevent harm. Cleaning and changing the soiled clothing of an incontinent resident in a timely manner exemplifies considerate care.

Respect is demonstrated in a caregiver’s attitude and choice of words. Show respect by calling residents by a title (e.g., Mr., Ms.) and their last name.

Freedom from Abuse. Residents have the right to be free from abuse. Abuse can be verbal, physical, or psychological. Screaming or shouting at a resident is verbal abuse; physically harming a resident, such as hitting or pinching, is physical abuse; and threatening or belittling a resident are forms of psychological abuse.

Informed Consent. A resident has the right to full information about interventions and procedures before they are performed. A resident, family, or responsible party signs a written consent form.

Right to Refuse Care. Residents or their responsible parties have the right to refuse care or procedures they do not desire to have performed. In such cases, caregivers must explain what will happen if a resident does not receive a treatment or procedure.

Privacy. Privacy is a basic human need, and residents have the right to expect their need for privacy will be protected. When changing a resident's clothing or performing a procedure, ensure privacy by closing the door or pulling the curtain around his or her bed.

Confidentiality. All residents have the right to confidentiality. Medical records and all personal information are considered confidential. A caregiver who shares information about a resident for any purpose other than care *breaches* (violates) that resident's right to confidentiality.

Response to Services. Caregivers are responsible for providing a reasonable response when residents request their services. Nursing assistants are responsible for providing services for which they are trained, such as grooming, toileting, bathing, lifting and transferring, and ambulating residents. Contact a nurse if a resident requests a service a nursing assistant cannot perform.

POLICIES AND PROCEDURES

A long term care organization has written policies and procedures that guide care and caregivers' responsibilities. These statements also protect an organization against lawsuits because they state tasks for which employees are responsible when they perform care.

JOB DESCRIPTIONS

An employer trains nursing assistants according to a written job description. Nursing assistants are expected to perform their jobs as they are trained and only to perform procedures for which they are trained. Failure to follow these guidelines can result in malpractice.

SUMMARY

Providing resident care involves many legal responsibilities. Nursing assistants are responsible for providing appropriate care and protecting resident rights. Performing one's duties conscientiously and responsibly helps protect a long term care organization's liability.

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POST TEST

ETHICAL AND LEGAL CONSIDERATIONS FOR CNAs

1. Murder and robbery are violations of:
 - a. criminal law.
 - b. civil law.

2. _____ law governs relationships between people.
 - a. Criminal
 - b. Civil
 - c. Liability

3. _____ is harm that results to a person, even though no harm was intended.
 - a. Defamation
 - b. Battery
 - c. Negligence

4. _____ is an intentional action that harms a person.
 - a. False imprisonment
 - b. Negligence
 - c. Malpractice

5. Residents have the right to be free from verbal, physical, and psychological abuse.
 - a. True
 - b. False

6. A _____ describes an employee's job and responsibilities.
 - a. procedure
 - b. civil law
 - c. job description
 - d. tort