

LEGAL STANDARDS FOR AFFILIATED PRACTITIONERS

Janet E. Michael, R.N.,M.S., J.D.
Portland, Maine

Sources of Standards of Care

- * Professional Practice Acts
- * State and Federal Statutes
- * Professional Association Standards
- * Textbooks and Treatises
- * Policies & Procedures
- * Equipment and Product Information
- * Case Law

Evidence re: Standards of Care

- * Standards of Care are National Standards
- * Expert witnesses used to verify SOC
- * Expert testifying re: SOC must have similar background and training to defendant (or licensee)

Professional Practice Acts

- * Give an overview of scope of practice
- * Nurse Practice Acts define such things as delegation and prescriptive authority if any
- * Information regarding professional practice acts can be found on-line

State and Federal Statutes

- * State Statutes and Regulations govern such things as the reporting of suspected abuse and the reporting of communicable disease
- * Federal Statutes and Regulations include such things as OSHA, the ADA, and HIPAA
- * Federal statutes and regulations generally prevail over State statutes and regulations

Professional Association Standards

- * Apply to all professionals whether or not they choose to belong to the association
- * Frequently include a Code of Ethics: see the Codes of Ethics for the AMA, ANA, ACOEM, and AAOHN

Textbooks and Treatises

- * A textbook must be shown to be authoritative in order to be entered into evidence
- * A journal article must be peer reviewed in order to be considered authoritative

Policies and Procedures

- * Need to know and follow agency/facility policies and procedures
- * If you have found a better way---get the policy changed to reflect current practice
- * Failure to follow policies and procedures could impact billing, malpractice coverage and more

Equipment & Product Information

- * Always read new equipment instructions and new product information (this includes medication information)
- * Occasionally review the product information to see if it has been updated

Case Law

- * Your attorney should review all applicable case law and review it with you
- * Generally the only case law that applies to your practice is that of your state
- * Sometimes case law from another state may impact your professional practice

POTENTIAL PITFALLS: COMMUNICATION

- * Consistent problem throughout healthcare settings
- * Need enhanced communication between all members of the healthcare team
- * Need enhanced communication with individual employees, employers, etc.

POTENTIAL PITFALLS: CONFIDENTIALITY

- * Protecting the privacy of conversations--- face-to-face and phone
- * Problems associated with faxed documents and email communication
- * Protection of medical records

POTENTIAL PITFALLS: DOCUMENTATION

- * Ensure that documentation is clear, concise and complete
- * Also, ensure timely documentation
- * Read the documentation of all members of the healthcare team

POTENTIAL PITFALLS: ASSESSMENT

- * Problems with missed or inadequate assessment
- * Need for follow-up assessment
- * Failure to communicate assessment data

POTENTIAL PITFALLS: INTERVENTION

- * Lack of appropriate intervention
- * Failure to provide appropriate follow-up
- * Failure to evaluate and revise plan of care