Guido, *Legal and Ethical Issues in Nursing*, 6e

**Chapter 06**

**Question 1**

**Type:** MCSA

A nurse is leaving the parking lot at the hospital and carelessly runs over a patient who was just discharged. Ironically, the nurse had been assigned to care for that patient that day. If the patient sues this nurse, which statement is true?

1. The nurse cannot be held liable for either malpractice or negligence based upon this set of facts.
2. The nurse can be held liable for both negligence and malpractice.
3. The nurse can be held liable for malpractice but not negligence.
4. The nurse can be held liable for negligence but not malpractice.

**Correct Answer:** 4
Rationale 1: The nurse may be held liable for this injury depending upon circumstances.

Rationale 2: While the nurse may be held liable for injuries, this liability does not fall under malpractice.

Rationale 3: Malpractice addresses a professional practice standard and professional status of the caregiver.

Rationale 4: The nurse may be considered negligent related to driving performance as driving action resulted in harm to an individual. This has nothing to do with the nurse’s nursing practice and the care provided to the patient that day, so malpractice does not apply.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 6.1 Distinguish negligence from malpractice.

Question 2

Type: MCSA

Punitive damages of one million dollars were awarded to the family of a patient who died following a nursing medication error. What is true of these punitive damages?

1. These damages are awarded to set an example to other nurses.
2. The jury believes the nurse’s actions were an honest mistake.
3. This jury identified this case as representing simple negligence.
4. The damages are awarded instead of the nurse serving prison time.

Correct Answer: 1
**Rationale 1**: Punitive damages may be awarded if there is malicious, willful, or wanton misconduct; are usually considerable; and are awarded to deter similar conduct in the future.

**Rationale 2**: Awarding of punitive damages indicates that the jury absolutely does not think the error was an honest mistake but rather that it was willful in some manner.

**Rationale 3**: Awarding of punitive damages indicates that the jury absolutely does not think the error was simple negligence but rather that it was willful in some manner.

**Rationale 4**: Punitive damages do not substitute for prison time.

**Global Rationale:**

**Cognitive Level**: Applying

**Client Need**: Safe Effective Care Environment

**Client Need Sub**: Management of Care

**Nursing/Integrated Concepts**: Nursing Process: Evaluation

**Learning Outcome**: 6.2 List the six elements of malpractice and give examples of each element in professional nursing practice.

**Question 3**

**Type**: MCSA

A lawsuit has been filed claiming that a nurse’s actions caused the death of a neonate. Why does the attorney for the plaintiff want to prove proximate cause?

1. Proximate cause determines how far the nurse’s liability extends for consequences of the alleged negligent actions.
2. The need for expert witnesses is eliminated because harm can be approximated.
3. A direct line of causation, from incident to injury, is proved.
4. To identify if the harm could have been predicted to result from the action of the defendant

Correct Answer: 1

Rationale 1: Proximate cause attempts to determine if the defendant is liable for occurrences that happen after the negligent act took place.

Rationale 2: Even if the cause is determined, expert witnesses may be needed to testify on other aspects of the case, such as practice standards.

Rationale 3: The direct line of causation from incident to injury describes the concept of cause-in-fact. Proximate cause can be difficult to prove because there are often intervening variables.

Rationale 4: Foreseeability is the concept that the harm that occurred could have been predicted as a result of the action of the defendant.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care


Learning Outcome: 6.2 List the six elements of malpractice and give examples of each element in professional nursing practice.

Question 4

Type: MCSA

The registered nurse who works in the obstetrics department is walking by the emergency department waiting room when a person cries out, “Help me! My mother is not breathing!” Does this nurse have a duty to assist?

1. Yes, the general duty of care exists to help in times of crisis or imminent harm.
2. No, the nurse is out of the normal working environment and should not interfere.
3. No, the nurse has no more duty to assist in this situation than a lay person.
4. Yes, the nurse has the duty to provide the same standard of care as an emergency department nurse.

Correct Answer: 1

Rationale 1: Even if the nurse is not assigned to a particular patient, a general duty of care arises if the patient presents with an emergency or is in need of instant help. Therefore, this nurse has a duty to assist in this situation.

Rationale 2: The fact that the nurse is out of the normal working environment does not relieve the general duty of care.

Rationale 3: The nurse is an employee of the hospital; therefore, a general duty of care exists.

Rationale 4: This nurse has the duty to provide care at the level of a prudent registered nurse, not as an emergency department nurse.

Global Rationale:

Cognitive Level: Applying
Client Need: Safe Effective Care Environment
Client Need Sub: Management of Care
Nursing/Integrated Concepts: Nursing Process: Implementation
Learning Outcome: 6.2 List the six elements of malpractice and give examples of each element in professional nursing practice.

Question 5
Type: MCSA

The court is establishing liability in a case in which several actions caused the plaintiff's injury. Which test of causation would be most useful in this case?
1. Proximal cause test
2. But-for test
3. Substantial factor test
4. Fact-of-cause

Correct Answer: 3

Rationale 1: Proximal cause determines how far the liability extends. Fact-of-cause is not a test of causation.

Rationale 2: The but-for test is used to determine if the act or omission actually caused the injury or harm sustained and is not as related to the percentage of cause.

Rationale 3: Substantial factor is considered the best test to pinpoint liability when several causes occur to bring a given injury. This test asks whether the defendant’s act or omission was a substantial factor in causing the ultimate harm or injury.

Rationale 4: Fact-of-cause is not a test of causation.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care


Learning Outcome: 6.3 Define the three tests currently used by courts in establishing cause-in-fact.

Question 6

Type: MCMA

A plaintiff’s attorney decides to use the doctrine of *res ipsa loquitur* in a case against the urologist who perforated a patient’s urethra during a cystoscopy. What must the plaintiff prove?
Note: Credit will be given only if all correct choices and no incorrect choices are selected.

**Standard Text:** Select all that apply.

1. This complication does not generally occur unless someone provided negligent care.
2. The locality rule was in effect at the time of the procedure.
3. Several agencies, from the manufacturer to the physician, were involved in the negligence.
4. The plaintiff had no control over the development of the perforation.
5. The event causing the perforation was deliberate.

**Correct Answer:** 1,4

**Rationale 1:** In order to prove the doctrine of *res ipsa loquitur*, the plaintiff must prove that perforation of the urethra does not occur unless someone was providing negligent care.

**Rationale 2:** The locality rule is not pertinent to the use of res ipsa loquitur. There is no need to prove that the event was deliberate.

**Rationale 3:** In order for this doctrine to be enacted, the injured party must prove that the accident was caused by an agency or instrumentality within exclusive control of the defendant.

**Rationale 4:** The instrument that caused the injury must be shown to have been under the management and control of the alleged wrongdoer, not the injured party.

**Rationale 5:** There is no need to prove that the event was deliberate.

**Global Rationale:**

**Cognitive Level:** Applying

**Client Need:** Safe Effective Care Environment

**Client Need Sub:** Management of Care

**Nursing/Integrated Concepts:** Nursing Process: Implementation
Learning Outcome: 6.4 Analyze the doctrine of res ipsa loquitur and give an example of when the doctrine would apply to professional nursing practice.

Question 7

Type: MCSA

A nurse has been named as defendant in a lawsuit claiming patient injury from misuse of equipment. The nurse says, “The small hospital where I work does not provide the same kind of continuing education training on use of equipment as larger, more modern hospitals.” The attorney representing this nurse may choose to use which rule or doctrine?

1. Res ipsa loquitur
2. The locality rule
3. Foreseeability
4. Tortfeasor

Correct Answer: 2

Rationale 1: Res ipsa loquitur was developed to prevent patients who have been harmed from being further harmed through their inability to show how the injury occurred. It is not related to continuing education differences between small hospitals and larger hospitals.

Rationale 2: The locality rule attempts to set a standard for the professional similar to that of other professionals practicing in the same geographic area of the country. This rule arose because of wide variations that once existed in patient care, depending on whether the hospital was in an urban or a rural setting. Most states have abolished locality rules.

Rationale 3: Foreseeability is the concept that certain events may reasonably be expected to cause specific outcomes.

Rationale 4: The tortfeasor is the person committing a civil wrong.

Global Rationale:

Cognitive Level: Analyzing
Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Assessment

Learning Outcome: 6.5 Compare and contrast the locality rule to a national standard.

Question 8

Type: MCMA

The nurse is providing care to a patient whose family has previously brought suit against another hospital and two physicians. How should the nurse provide care to this patient?

Note: Credit will be given only if all correct choices and no incorrect choices are selected.

Standard Text: Select all that apply.

1. Spend as little time as possible interacting with the patient and family so that there will be less chance of saying the wrong thing or performing in an incompetent manner.
2. Provide care in a compassionate, competent manner.
3. Assign the patient to a different nurse each day so that no one nurse has to work under this stress.
4. Keep the patient well informed by explaining all interventions before and during their completion.
5. Review standards of care that pertain to this patient before providing care.

Correct Answer: 2,4,5

Rationale 1: Avoiding the patient does not resolve the issue and may actually increase the patient’s feeling that health care is not reliable.

Rationale 2: Giving the same compassionate, competent care that all patients receive is the best strategy in caring for suit-prone patients.
Rationale 3: Assigning a different nurse each day may give rise to suspicions by the patient and also provides less continuity of care.

Rationale 4: Keeping patients well informed helps to reassure them and make them less fearful.

Rationale 5: The nurse should review any standards of care that apply to this patient or to interventions before providing care. The nurse should ensure that standards of care are met or exceeded.

Global Rationale:

Cognitive Level: Analyzing

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 6.6 List ways to avoid or lessen the potential of future malpractice cases.

Question 9

Type: MCMA

Which scenarios would the nurse identify as a quasi-intentional tort rather than an intentional tort?

Note: Credit will be given only if all correct choices and no incorrect choices are selected.

Standard Text: Select all that apply.

1. A visitor refuses to leave the patient’s room after upsetting the patient and being asked to leave.
2. The physician accuses the nurse of incompetence in front of the patient’s family.
3. The nurse tells the patient that if he does not start drinking fluids, an intravenous line will be necessary.
4. The nurse physically restrains a patient so that intravenous access can be obtained.
5. The nursing student takes a cellphone picture of a patient’s leg wound to show her classmates.

Correct Answer: 2,5

Rationale 1: Refusing to leave after being asked is trespass to land, which is an intentional tort.

Rationale 2: Defamatory language about a living person that would adversely affect his or her reputation is defamation. Defamation is a quasi-intentional tort.

Rationale 3: This could be construed as a threat, which would be considered assault. Assault is an intentional tort.

Rationale 4: Physically restraining a patient can be construed as false imprisonment or battery, both of which are intentional torts.

Rationale 5: Using patient’s pictures without consent is invasion of privacy, which is a quasi-intentional tort.

Global Rationale:

Cognitive Level: Analyzing

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 6.7 Define and differentiate between intentional and quasi-intentional torts.

Question 10

Type: MCSA
Upon entering a patient’s room to complete discharge instructions, the nurse discovers the patient in tears. The business office has stated that the patient cannot leave until someone pays a portion of the hospital bill. What should the nurse do?

1. Call social services to request an immediate financial evaluation.
2. Continue preparations for discharge, comforting the patient as much as possible.
3. Stop discharge preparations until the patient is cleared by the billing office.
4. Cancel the discharge plans and notify the physician of the patient’s status.

Correct Answer: 2

Rationale 1: It is not within the nurse’s scope of practice to request a financial evaluation. This situation could be construed to represent false imprisonment.

Rationale 2: The nurse must continue to practice within the nursing scope of practice. This situation could be construed to represent false imprisonment.

Rationale 3: This scenario could be construed as false imprisonment. The nurse should not stop or slow discharge preparations.

Rationale 4: Cancelling the discharge order is not within the nurse’s scope of practice. This situation could be construed as false imprisonment.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 6.8 List the more commonly occurring intentional torts in health care settings and give an example of each.
Question 11

Type: MCMA

Which action could result in the nurse being charged with conversion of property?

*Note: Credit will be given only if all correct choices and no incorrect choices are selected.*

Standard Text: Select all that apply.

1. The nurse removes the patient’s shirt and bra during treatment of a fractured ankle.
2. The nurse removes a package of cigarettes from a patient’s robe pocket.
3. The nurse takes the patient’s picture without permission.
4. The nurse searches a patient’s suitcase for evidence of illegal drugs.
5. The nurse places a patient in four-point restraints to place a nasogastric tube.

Correct Answer: 1,2

**Rationale 1:** Removing the patient’s clothing, especially if done against the patient’s will, could be construed as conversion of property. This is especially the case if there is no apparent reason for the clothing to be removed.

**Rationale 2:** Conversion of property means that the nurse took something of the patient’s without permission.

**Rationale 3:** Taking a patient’s picture without permission is an invasion of the individual’s privacy.

**Rationale 4:** Searching the patient’s suitcase could be considered invasion of privacy, but unless the nurse took something out of the suitcase, it is not conversion of property.

**Rationale 5:** Restraining the patient may result in a charge of false imprisonment.

Global Rationale:
Cognitive Level: Analyzing

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 6.8 List the more commonly occurring intentional torts in health care settings and give an example of each.

Question 12

Type: MCSA

An out-of-state caller becomes irate when the nurse cannot provide information over the telephone about a hospitalized friend. The caller says, “If you know what is good for you, you had better tell me.” Has a civil assault occurred?

1. Yes, there is an indication that the caller has the physical strength to do harm.
2. Yes, the threat of harm is assault.
3. No, actual physical contact must be made for it to be assault.
4. No, the caller is out of state and cannot reach the nurse.

Correct Answer: 4

Rationale 1: In this case, the caller is out of state, so it is not reasonable that immediate harmful or offensive contact will occur. While this caller may possess the physical strength to do harm, the caller is too far away to act on the threat immediately.

Rationale 2: Even though this statement may be uncalled for or frightening, it most likely does not meet the definition of assault as the caller is too far away to do immediate physical harm.

Rationale 3: Battery is when actual physical contact or harm occurs.

Rationale 4: Assault is defined as the action or motion that creates a “reasonable apprehension in the other person of immediate harmful or offensive contact to the plaintiff-person.” While this caller may possess the
physical strength to do harm, the caller is too far away to act on the threat immediately.

Global Rationale:

Cognitive Level: Analyzing

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Assessment

Learning Outcome: 6.8 List the more commonly occurring intentional torts in health care settings and give an example of each.

Question 13

Type: MCSA

Which common practice puts the nurse at liability for invasion of patient privacy?

1. During care the nurse reveals information about the patient to those in the room.
2. The nurse releases information about the patient to nursing students who will be caring for the patient the next day.
3. The nurse conducts a patient care session about a patient whose care is difficult and challenging.
4. Confidential information regarding an admitted patient is released to third-party payers.

Correct Answer: 1

Rationale 1: Giving out information about a patient without permission is an invasion of privacy.

Rationale 2: Providing information to those who will be providing care for the patient is not an invasion of privacy.
Rationale 3: Providing information about a patient to those who will be involved in caring for a patient is not an invasion of privacy.

Rationale 4: Release of information about a patient to a third-party payer is permissible because the patient signs consent for this release on admission.

Global Rationale:

Cognitive Level: Analyzing

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 6.9 List the more commonly occurring quasi-intentional torts in health care settings and give an example of each.

Question 14

Type: MCMA

The health care facility has sponsored a continuing education offering on emergency management of pandemic influenza. At lunch, a nurse is overheard saying, “I’m not going to take care of anyone that might have that flu. I have kids to think about.” What is true of this statement?

Note: Credit will be given only if all correct choices and no incorrect choices are selected.

Standard Text: Select all that apply.

1. The nurse has a greater obligation than a lay person to care for the sick or injured in an emergency.
2. This statement reflects defamation and may result in legal action against the nurse.
3. The nurse has the right to refuse to care for anyone that could endanger the nurse.
4. This statement is a breach of the Code of Ethics for Nurses.
5. The nurse has this right as no nurse–patient contract has been established.

Correct Answer: 1, 4

Rationale 1: Since nurses have greater ability to provide care, their obligation to provide care is higher than that of lay persons.

Rationale 2: The nurse has not said anything negative about flu victims, so the statement is not an example of defamation.

Rationale 3: Health care professionals have assumed the risk of care for these individuals based on their choice of a profession dedicated to the care of the sick.

Rationale 4: Consistent with the Code of Ethics for Nurses, members of the nursing profession should be available in times of emergency as the profession is a social contract with the public.

Rationale 5: The nurse, by virtue of licensure and employment, is held to a higher standard during emergencies.

Global Rationale:

Cognitive Level: Analyzing

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care


Learning Outcome: 6.10 Discuss some of the ethical issues involved in nursing and tort law.

Question 15

Type: MCSA

After 3 years of uneventful employment, the nurse made a medication error that resulted in patient injury. What hospital response to this event is ethical?
1. The hospital was supportive and assistive as the nurse coped with this event.
2. The nurse was dismissed for incompetence.
3. The hospital quality department advised the nurse not to tell the patient about the error.
4. The nurse was reassigned to an area in which there is no direct patient care responsibility.

Correct Answer: 1

Rationale 1: Nurses must be held accountable for errors but should be treated in a professional and assistive manner.

Rationale 2: With this nurse’s employment record, dismissal is not an appropriate or ethical step for the hospital.

Rationale 3: Disclosure of errors is the ethical approach.

Rationale 4: With this nurse’s employment record, transfer to a no-patient-care area is not an appropriate or ethical step for the hospital.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 6.10 Discuss some of the ethical issues involved in nursing and tort law.