Objectives

• List licensure requirements for physicians.
• Describe methods of licensure.
• Define the components of public and private law.
• Recognize the differences between ethics and law.
Objectives

• Identify areas of medical ethics of particular concern to medical assistants.
• List the five primary elements of the American Association of Medical Assistants Code of Ethics.
• List ethical considerations surrounding the life of a fetus.
• List and define the three categories of medical transplants.
Objectives

• Name the most common type of transplant.
• Describe a living will.
• Name four examples of tort law.
• Define the term emancipated minor and give examples.
• Describe the three parts of the physician-patient contract.
Objectives

- Define the terms implied consent and express consent.
- Prepare common consent forms used in medical offices.
- Define the term privileged communication.
- List instances of legally required disclosure.
- Explain the terms defamation of character, libel, and slander.
Objectives

• Describe the conditions for revocation or suspension of a medical license.
• List five common modes of value transmission.
• Describe seven steps in the valuing process.
• Use values clarification strategies in clinical practice.
Objectives

• Use an ethical framework and decision making process to resolve ethical problems.
• Identify four functions of institutional ethics committees.
Vocabulary

- Agent
- Artificial Insemination
- Assault
- Battery
- Biennially
- Civil Law
- Coercion

- Confidentiality
- Criminal Law
- Defamation
- Emancipated Minor
- Enact
- Endorsement
- Ethics
Vocabulary

- Explicit
- Expressed
- Forged
- Fraudulent
- Genetic
- Implied
- Incompetent
- Intimidation
- Liability
- Moral
- Non Compos Mentis
- Peer Review
- Proxy
- Prudent
- Quackery
Vocabulary

- Rational
- Reciprocity
- Revoke
- Statutes
- Surrogate
- Tort
- Trustworthiness
- Honesty
- Autonomy
- Beneficence
- Nonmaleficence
- Confidentiality
- Values
Vocabulary

- Respect
- Caring
- Citizenship
- Responsibility
- Fairness
- Integrity
- Beliefs
- Advocacy
- Clinical Ethics
- Ethical Dilemma
- Value System
- Values Clarification
How does ethics play a role in medicine and health care?

• On a 3x5 index card answer the question in a complete sentence and bring your answer to the next class period.
• Be Prepared to discuss your response.
Index Card Format

Front:
• Top Left – Hand Corner
  - Name
  - Class
  - Period
Skip 2 Lines –
Write Question and Answer
Medical Assistant

Trustworthiness

Fairness

Autonomy

Citizenship

Claim

Beneficence

ETHICS

Honesty

Respect

Responsibility

Caring

Nonmaleficence
What is Ethics?

• a system of moral principles: the ethics of a culture
• the rules of conduct recognized in respect to a particular class of human actions or a particular group, culture, etc.: medical ethics; Christian ethics
• moral principles, as of an individual: His ethics forbade betrayal of a confidence.
• the branch of philosophy dealing with values relating to human conduct, with respect to the rightness and wrongness of certain actions and to the goodness and badness of the motives and ends of such actions.
Ethical Problems

• Involve situations where there are conflicts between one or more values and uncertainty about the correct course of action.

• Ethical problems involve questions about what is right or good to do at individual, interpersonal, organizational, and even societal levels.
Ethical Uncertainty

• Occurs when a healthcare professional feels indecision or a lack of clarity, or is unable even to know what the moral problem is, while at the same time feeling uneasy or uncomfortable.
Ethical Dilemmas or Questions

• Arise when there are equally compelling reasons for and against two or more possible courses of action, and where choosing one course of action means that something else is relinquished or let go.

• True ethical dilemmas are infrequent in healthcare. More often, there are complex ethical problems with multiple courses of actions from which to choose.
Ethical Distress

• Arises when healthcare professionals know or believe they know the right thing to do, but for various reasons including circumstances beyond their control do not or cannot take the right action or prevent a particular harm.

• When values and commitments are compromised in this way, healthcare professionals’ identity and integrity as moral agents are affected, and they fell moral distress.
Ethical Residue

- What healthcare professionals experience when they seriously compromise themselves or allow themselves to be compromised.
- The moral residue that healthcare providers carry forward from these kinds of situations can help them reflect on what they would do differently in similar situations in the future.
Ethical Disengagement

- Can occur if healthcare providers begin to see the disregard of their ethical commitments as normal. The healthcare provider may become apathetic or disengage to the point of being unkind, non-compassionate, or even cruel to other healthcare workers and to persons receiving care.
Ethical Violations

• Are actions or failures to act that breach fundamental duties to the persons receiving care or to colleagues and other healthcare providers.
Ethical Courage

• Is exercised when a healthcare provider stands firm on a point of moral principle or a particular decision about something in the face of overwhelming fear or threat to himself or herself.
• trustworthiness, trustiness
the trait of deserving trust and confidence
adjective: worthy of confidence: dependable
<a trustworthiness guide> <trustworthy information>
Honesty

- fairness and straightforwardness of conduct
- adherence to the facts
- sincerity
Autonomy

• the quality or state of being self-governing; especially: the right of self-government
• self-directing freedom and especially moral independence
• a self-governing state
Beneficence

- doing or producing good; especially: performing acts of kindness and charity
Nonmaleficence

• The ethical principle of doing no harm, based on the Hippocratic maxim, primum non nocere, first do no harm.
Confidentiality

• marked by intimacy or willingness to **confide** <a confidential tone>

• **private, secret** <confidential information>
  3 : entrusted with **confidences** <a confidential clerk>

• containing information whose unauthorized disclosure could be prejudicial to the national interest — compare **secret, top secret**
Values

- relative worth, utility, or importance
- something (as a principle or quality) intrinsically valuable or desirable
Respect

• an act of giving particular attention: 
  consideration

• high or special regard: 
  esteem

• the quality or state of being esteemed c
  plural: expressions of respect or deference
  <paid our respects>
Caring

• to give care <care for the sick>
• to have a liking, fondness, or taste <don't care for your attitude>
• to have an inclination <would you care for some pie>
Citizenship

- the status of being a citizen
- membership in a community (as a college)
- the quality of an individual's response to membership in a community
Responsibility

• the quality or state of being responsible: as moral, legal, or mental accountability

• **reliability**, **trustworthiness**

• something for which one is **responsible**: **burden** <has neglected his **responsibilities**>
Fairness

• marked by impartiality and honesty: free from self-interest, prejudice, or favoritism
• a very fair person to do business with
• conforming with the established rules: allowed
Integrity

• firm adherence to a code of especially moral or artistic values: **incorruptibility**
Beliefs

• a state or habit of mind in which trust or confidence is placed in some person or thing
• something **believed**
• conviction of the truth of some statement or the reality of some being or phenomenon especially when based on examination of evidence
Regulation of Medical Practice

• Our founding fathers saw a need for regulation of the practice of medicine, and in colonial days medical practice acts were in effect for the protection of citizens.

• These acts were gradually repealed because it was believed that the Constitution gave everyone the right to practice medicine.
Regulation of Medical Practice

• This resulted in a period of time in the nineteenth century when quackery was common.

• After a Supreme Court decision in 1899 upheld a state’s right to establish qualifications for people wishing to practice medicine, all states soon established medical practice acts.
Regulation of Medical Practice

• Most states statutes define two basic elements that constitute the practice of medicine:
  • Diagnosis
  • Prescribing of treatment
• Only a medical physician and some mid-level practitioners can engage in the diagnosing and prescribing of treatment for the physical condition of human beings.
Regulation of Medical Practice

- In general terms, medical practice acts define the practice of medicine and establish requirements for licensure and grounds for suspending or revoking a license.
Licensure Requirements

- Licensure requirements are established by each state. A physician is usually required to:
  - Be of legal age
  - Be of good moral character
  - Have graduated from an approved medical school
  - Have completed an approved residency program or its equivalent
Licensure Requirements

• Be a resident of the state where the physician is practicing.
• Have passed the oral and written examinations administered by the National Board of Medical Examiners and the state where the physician is practicing.
Licensure Requirements

• Physicians who have all the necessary requirements for licensure may also be licensed by reciprocity or endorsement.

• A physician who has been licensed in one state and wishes to move to another state may be granted a license by reciprocity if it is determined that the original licensure requirements are equal to the requirements of the new state.
Licensure Requirements

Many physicians take the test administered by the National Board of Medical Examiners at the same time they take their first state test. The high standards of the national board make it possible to obtain a state license by endorsement when the national board examinations have been successfully passed.
Licensure Requirements

• Physicians are required to renew their license annually or biennially.

• As the medical assistant you, should be sure that the physician has a record of all continuing medical education credits earned since the previous renewal, as this is a requirement in many states.

• Physicians earn CMEs by attending seminars and scientific meetings as well as university courses.
Licensure Requirements

• There are some exceptions to the rule requiring a current state license to practice medicine.

• Any physician is free to administer first aid outside the state of residence.

• Physicians in the military must be licensed to practice medicine in their home states. They do not need to be licensed in the state which they are stationed as long as they practice only on the military base.
Licensure Requirements

- Each state’s Board of Medical Examiners provides procedures for revocation or suspension of licensure.
- In some states the board has the power to revoke a license, and in other states a special review committee has this authority.
Licensure Requirements

• A physician may lose the license to practice medicine if convicted of a crime such as murder, rape, violation of narcotic laws, or income tax evasion.

• A medical license may also be revoked for unprofessional conduct. The most usual offenses in this category are betrayal of patient-physician confidence, illegal use of drugs and alcohol, and inappropriate sexual conduct with patients.
Licensure Requirements

• A license may be revoked because of proven fraud in the application for a license. In some cases fraudulent diplomas are used.

• Fraud in the filing of claims for services that were not rendered and fraud in the use of unproven treatments are also grounds for revocation of a license.
Licensure Requirements

- Physicians who are found to be incompetent to practice because of mental incapacity also may have their license revoked.
Ethical Considerations

• Whereas laws concern matters enforced through the court-system, ethics deals with what is morally right and wrong.

• The ethical standards established by a profession are administered by peer review, and violation of the standards may result in suspension of membership.
Physician’s Code

• The American Medical Association Principle of Medical Ethics defines the standards of conduct and behavior for physicians.

• Nine principles are the basis of the AMA’s Code of Medical Ethics, which is a comprehensive ethics guide for physicians.
Medical Assistant’s Code

• As an agent of the physician, you the medical assistant are also governed by ethical standards: The American Association of Medical Assistants (AAMA) Code of Ethics, is in many respects, similar to that of the American Medical Association (AMA).
Medical Assistant’s Code

• A code of ethics is made up of statements regarding how individuals affiliated with an organization should conduct themselves.

• The AAMA’s Code of Ethics indicates that medical assistants will abide by ethical and moral principles as they relate to the profession.
Medical Assistant’s Code

• The code contains five specific pledge statements concerning how medical assistants will conduct themselves in the performance of their profession.
• In addition, the Medical Assistants Creed, contains eight statements that medical assistants agree to accept as evidence of their desire to practice their profession to the best of their ability.
The American Association of Medical Assistants
Code of Ethics

- The Code of Ethics of AAMA shall set forth principles of ethical and moral conduct as they relate to the medical profession and the particular practice of medical assisting.
The American Association of Medical Assistants
Code of Ethics

• Members of AAMA dedicated to the conscientious pursuit of their profession, and this desiring to merit the high regard of the entire medical profession and the respect of the general public which they do serve, do pledge themselves to strive always to:
The American Association of Medical Assistants
Code of Ethics

A. Render services with full respect for the dignity of humanity.

B. Respect confidential information obtained through employment unless legally authorized or required by responsible performance of duty to divulge such information.

C. Uphold the honor and high principles of the profession and accept its disciplines.

D. Seek to continually improve the knowledge and skills of medical assistants for the benefit of patients and professional colleagues.

E. Participate in additional service activities aimed toward improving the health and well-being of the community.
Medical Assistant’s Creed

- The creed of the American Association of Medical Assistants reads as follows:
- I believe in the principles and purpose of the profession of medical assisting.
- I endeavor to be more effective.
- I aspire to render greater service.
- I protect the confidence entrusted to me.
- I am dedicated to the care and well-being of all people.
- I am loyal to my employer.
- I am true to the ethics of my profession.
- I am strengthened by compassion, courage, and faith.
State and Federal Laws

• The physician must release patient information when the patient authorizes the release or if the release is required by law.
• State laws vary regarding release of information.
State and Federal Laws

• Information that must be reported includes:
• Births and deaths
• Cases of violence such as gunshot wounds, knifings, and poisonings
• Sexually transmitted diseases
• Suspected cases of abuse (child, spousal, or elders).
• Cases of contagious, infectious, or communicable diseases.
State and Federal Laws

- Medical assistants should check with local authorities for the procedures to be followed in making these reports.
- They need to be aware also of other required local reports.
- When a physician moves or retires, it is important that original records be kept until the period for filing of liability suits has expired.
- A copy of the records is provided to a new physician if one takes over the practice.
State and Federal Laws

• The Federal Drug Administration has established five categories, or “schedules”, that classify chemical substances with specific regulations as to their use.

• The states also have laws that further define the use of drugs.

• It is important for the medical assistant to understand that the physician, and only the physician (some mid-level practitioners in certain states) can legally prescribe medications.
State and Federal Laws

• The medical assistant must understand that certain medication cannot be refilled and that restrictions limit the number of times some medications can be refilled.

• Some medication orders must be accompanied by a written prescription before they can be filled, while others can be called in by telephone.

• It is important to remember that all patients should be scheduled to see the physician at regular intervals to check all medications they are currently taking.
The United States Department of Justice Drug Enforcement Administration publishes a physician’s manual that gives all the information necessary for office personnel to understand the provisions of the Controlled Substance Act. This booklet is free and is furnished on request.
The Drug Enforcement Administration also publishes a Physician Manual, which includes recommendations for physicians about the care and security of prescription pads to help reduce the number of forged prescription orders:
1. Prescription pads should be stored in a safe place (locked cabinet) to discourage theft. There should be a minimum number of prescription pads used.

2. Schedule II controlled substances are to be written in ink or typed and signed by the physician.
3. The prescription should contain the amount of medication in Arabic or Roman numerals as well as the written number to deter changing the amount.

4. Unless absolutely necessary, the amount (number) of a controlled substance should be limited when writing prescriptions.
5. The amount of controlled substances carried in the doctor’s medical bag should be kept at a minimum.

6. If the physician keeps a medical bag in the car, it must be locked in the trunk.

7. Use caution when prescribing controlled substances to a patient who has disclosed that another doctor has prescribed a controlled drug. Check with the doctor at the patient’s medical facility, or examine the patient to make a decision regarding a prescription for a controlled drug.
8. Prescription blanks should never be signed in advance.
9. Controlled substances must be accurately recorded and maintained to comply with the regulations of the Controlled Substance Act.
10. Verify prescription orders with the pharmacist to assist with the dispensing of the correct medication.
11. To report or obtain information regarding prescription medications, contact the nearest DEA field office.
Legal and Ethical Issues

• In the practice of medicine it can be difficult to distinguish between legal and ethical issues.

• New technologies allow us to have more control over birth by detecting in utero abnormalities. The improved techniques of artificial insemination bring before the court system the problems associated with surrogate motherhood and paternal responsibility.
Legal and Ethical Issues

• Many advances have been made in the use of fetal tissue transplants. Our society must study the ethical and emotional considerations of ending a pregnancy if a serious genetic deficiency is found before birth or allowing the infant to be born handicapped.
Legal and Ethical Issues

• The use of transplants has added another series of ethical problems. Medical transplants are divided into three categories:
  • Autograft: transplantation of a person’s own tissue from one body site to another (can also be used to describe transplant between identical twins)
Legal and Ethical Issues

• Homograft: transplantation of tissue from one person to another.
• Heterograft: transplantation of animal tissue to a human being.
The Uniform Anatomical Act

- The Uniform Anatomical Act was passed in 1968. By 1978, it was reported that all 50 states had established some system of organ and tissue donor identification so that individuals could ensure that when they died they would be identified as a donor.

- Any person of sound mind and legal age may donate any body part after death for research or transplant.
The Uniform Anatomical Act

• The family may make this decision for the donor if the donor has not done so while living.
• The time of death must be determined by a physician who will not be involved in the transplant in any way.
• No money can be exchanged for making an anatomical donation.
The Uniform Anatomical Act

• Many states allow residents to mark and indicate that they are an organ donor on the back of their driver’s license.

• Different ethical problems affect the use of organs from living donors. As the technology of transplantation becomes more readily available, the demand for organs will grow.
The Uniform Anatomical Act

- One source estimates that since the year 2000, most of the residents of India who live in poverty are surviving on one kidney as the result of common practice of selling their kidneys to wealthy foreigners.
The Uniform Anatomical Act

- India is not the only country to have developed this trend, the Philippines, Thailand, and several other countries have noted the increase in organ transplantation by foreigners with local residents as the primary donors.

- Another ethical issue of concern is the ability to grow tissue and organs from manipulated stem cells or cultivated donor tissue.
The Uniform Anatomical Act

- This research is highly controversial yet highly motivated by the need for replacement organs to sustain life.
Living Will

• The health care team will provide a larger percentage of care to geriatric patients as the quality of care extends life expectancy.

• Personnel working within a medical office must listen and pay close attention to the wishes and desires of the elderly, and allow them to make their own decisions regarding a living will.
Living Will

• A majority of states now have laws that define policies on withholding life-sustaining procedures from hopelessly ill patients.
• The living will is signed when the patient is competent and must be witnessed by two individuals.
Living Will

- The patient and all the family members should discuss these issues while the patient is still rational and can fully comprehend the implications.
- A chosen family member should then be made aware of the responsibility of carrying out the patient’s wishes as it becomes necessary.
- Copies of the living will should be filed with the family, the primary care physician, and the family’s attorney.
Durable Power of Attorney

• After making a living will, it is important to complete a durable power of attorney for health care form, authorized by either your state’s statute or some other legal authority.

• This allows a person to be appointed as an agent who will make health care decisions for the person with the living will if at any time they become unable to make them for themselves.
Durable Power of Attorney

- The person appointed as the agent should be someone trustworthy.
- The appointed proxy or agent must be aware of the person’s wishes and understand the complete documents before giving consent to carry out the agreement.
- Some people record the wishes of the living will and power of attorney on video tape so there is no doubt about what statements were made about their care.
Durable Power of Attorney

- It is recommended that a copy of the video be kept by the appointed attorney.
- The video dialogue should state the date it is made, who has copies, and the living will/advanced directives of the patient.
Accepting or Refusing Treatment

• A medical “Miranda warning” law approved by Congress and signed by President George Herbert Walker Bush gives patients legal options for refusing or accepting treatments if they are incapacitated.

• The law which took effect in November 1991, applies to hospitals, hospices, nursing homes, health maintenance organizations, and other health care facilities that receive money from Medicare and Medicaid programs.
Accepting or Refusing Treatment

• Under the law, patients must receive written information explaining their right-to-die options according to their state laws.

• The law stipulates that hospitals and other providers must note on medical records whether patients have legal directives on treatment.

• Providers must also have procedures in place to ensure that they comply with the patient’s wishes.
Legal Matters

- In the United States, the laws are divided into two categories:
  - Public Law
  - Private Law or Civil Law
Public Law

- The various branches of public law include:
  - Criminal Law
  - Constitutional Law
  - Administrative
  - Statutory Law
  - International Law
  - Common Law
Criminal Law

• Deals with offenses against all citizens.
• Concerns state and federal criminal statutes, which define criminal actions such as murder, manslaughter, criminal negligence, theft, and illegal possession of drugs.
• The practice of medicine without a license is an offense under criminal law.
Constitutions

• Federal and state constitutions indicate how the federal and state governments are created, and they give authority and state the principles and provisions for establishing specific laws. Although they contain relatively few laws, constitutions serve as guides to legislative bodies.
Constitutional Law

• Defines the powers of the government and the rights of its citizens.

• Each state has a constitution that defines its powers over matters not covered by the federal government which are spelled out in the United States Constitution.
Administrative Law

• Is concerned with the powers of governmental agencies.
• Executive officers (ie. the President of the United States, state governors, or city mayors) administer agencies that, among other functions, are responsible for law enforcement.
• These agencies have the power to make administrative rules and regulations, in conformity with enacted law, that act as laws and are enforceable.
Statutory Law

• Must be in keeping with both the federal constitution and the state constitution.
• Medical Practice Acts are an example of statutory laws.
International Law

- Is concerned with the agreements and treaties between countries.
Common Law

• The government provides for a judiciary system, which is responsible for reconciling controversies. It interprets legislation at the local, state, and national levels as it has been applied in specific instances and makes decisions concerning law enforcement.

• Common law has evolved from these judiciary decisions.
Common Law

• Common law is court-made law, and is based on the principle of stare decisis, or “let the decision stand”.
• After a decision has been made in a court of law, the principle in that decision becomes the rule to follow in other similar cases.
• The case that first sets down the rule by decision is called a precedent.
Common Law

- Court decisions can be changed, but only with strong justification.
- Common law helps prevent one set of rules from being used to judge one person, and another set to judge another person in similar circumstances.
Private Law or Civil Law

• Regulates relationships among people.
• Includes law relating to contracts, ownership of property, and the practice of medicine, nursing, pharmacy, and dentistry.
Private Law

• The practice of medicine is primarily affected by private law or civil law, specifically by contract law and tort law.

• The patient-physician relationship is considered a contractual one.

• A tort is defined as any of a number of actions done by one person or group of person’s that causes injury to another.

• Violations of tort law may be intentional or negligent.
Litigation

• The process of bringing and trying a lawsuit.
Plaintiff

- The person(s) or government bringing the suit against another.
Defendant

- The one being accused of a crime or tort.
- This person is presumed innocent until proven guilty of a crime or tort.
Crime vs Tort

- A crime is a violation punishable by the state.
- A tort is subject to action in a civil court with damages usually being settled with money.
- By its very nature a wrong tried as a crime is considered a more serious offense, with more legal implications, than a tort.
Crime

• Though there may be only one victim of a crime, criminal acts are considered to be against the public as well.
• In criminal cases the government, called “the people,” prosecutes the offender.
• Crimes are further classified as misdemeanors or felonies.
Misdemeanor

- A less serious crime than a felony.
- Commonly punishable with fines, imprisonment for less than 1 year, or both, or with parole.
Felony

• Punishable by imprisonment in a state or federal penitentiary for more than one year.
Torts

• May be intentional or unintentional acts of wrongdoing.
• Some intentional torts for which healthcare providers can be held liable include assault and battery, defamation of character, invasion of privacy, false imprisonment, and fraud.
• A person committing an intentional tort is considered to have knowledge of the permitted legal limits of his or her words or acts.
• Violating these limits is grounds for prosecution.
Torts

• Unintentional torts are referred to as negligence.
• For example, a healthcare professional who fails to initiate proper precautions to prevent patient harm is subject to the charge of negligence.
Assault

• Threat or attempt to make bodily contact with another person without that person’s consent.
Battery

- An assault that is carried out and includes willful, angry, and violent or negligent touching of another person’s body or clothes or anything attached to or held by that other person.
- Forcible removing a patient’s clothing, administering an injection after the patient has refused it, and pushing a patient into a chair are examples of battery.
Negligence

• Negligence is an act or failure to act as a reasonably prudent healthcare professional under the same or similar circumstances that directly or proximately causes injury to a patient.
Malpractice

• The negligent causing of an injury committed by a healthcare professional in the course of professional duties.
Defamation of Character

- An intentional tort in which one party makes derogatory remarks about another that diminish the other party’s reputation.
- Slander is oral defamation of character.
- Libel is written defamation of character.
- This tort is grounds for an award of civil damages, and are awarded based on the amount of damage done to the plaintiff.
Invasion of Privacy

• The U.S. Supreme Court has interpreted the right against invasion of privacy as inherent in the U.S. Constitution.

• The 4th Amendment gives citizens the right of privacy and the right to be left alone.

• State courts have also been strong in protecting a patient’s right to have information kept confidential.
Invasion of Privacy

• Certain acts by healthcare professionals could constitute invasion of privacy, as the following examples illustrate:

• Unnecessary exposure of patients while moving them through a corridor or while caring for them in rooms they share with others.
Invasion of Privacy

- Talking with patients in rooms that are not soundproof.
- Discussing patient information with people not entitled to the information (i.e., with the patient’s employer, the press).
- Pressing the patient for information not necessary for care planning.
Invasion of Privacy

- Interacting with the patient’s family in ways not authorized by the patient.
- Using tape recorders, dictating machines, computers, and the like without taking precautions to ensure the patient’s confidentiality.
- Preparing written or oral class assignments about patients without concealing their identity.
Invasion of Privacy

- Carrying out research without taking proper precautions to ensure the anonymity of patients.
False Imprisonment

• Unjustified retention or prevention of the movement of another person without proper consent.

• A person cannot be legally forced to remain in a health agency, such as a hospital, if he or she is of sound mind, even if the healthcare professionals believe the person should remain for additional care.
Fraud

- Willful and purposeful misrepresentation that could cause, or has caused loss or harm to a person or property.
- Misrepresentation is a common fraudulent act, (i.e. Identity theft).
Liability

• Involves four elements that must be established to prove that malpractice or negligence has occurred: duty, breach of duty, causation, and damages.

• Duty refers to an obligation to use due care and is defined by the standard of care appropriate for the healthcare provider relationship.
Liability

• Breach of duty is the failure to meet the standard of care.
• Causation, the most difficult element of liability to prove, shows the failure to meet the standard of care actually caused the injury.
• Damages are the actual harm or injury resulting to the patient.
HIPAA – Health Insurance Portability and Accountability Act of 1996

• HIPAA which was put into place in August 1996, but did not go into effect until April 2003, was created because privacy of personal information is such an important issue for everyone.

• It was written by the Department of Health and Human Services to ensure nationwide standards were mandated to protect private health information.
This act served to standardize how all patient information would be handled throughout the country.

Every healthcare provider must have specific policies in effect in order to comply with HIPAA, and staff in each provider’s office must be trained to adhere to HIPAA.

There will be at least one person in the provider’s office that will be designated as the HIPAA officer to oversee compliance.
HIPAA – Health Insurance Portability and Accountability Act of 1996

• HIPAA also requires providers to distribute to every patient a Notice of Privacy Practices; this document informs the patient of the following six components:
  • How a patient’s protected health information is used and disclosed.
  • The provider’s duties to protect the patient’s privacy.
HIPAA – Health Insurance Portability and Accountability Act of 1996

• Written notice of the provider’s practices to ensure each patient’s privacy.
• The terms of the provider’s notice.
• The patient’s individual rights concerning protected health information.
• How to contact the office to obtain further information or to file a complaint.
HIPAA – Health Insurance Portability and Accountability Act of 1996

• Because of this ruling healthcare providers must be exceptionally careful with regard to releasing patient information without specific authorization and consent.

• Noncompliance with this rule has civil penalties associated with it, and if severe enough, criminal penalties may apply.
HIPAA – Health Insurance Portability and Accountability Act of 1996

• According to HIPAA patient’s have a right:
• To see and copy their health record.
• To update their health record.
• To get a list of the disclosures a healthcare institution has made independent of disclosures made for the purposes of treatment, payment, and healthcare operations.
HIPAA – Health Insurance Portability and Accountability Act of 1996

• HIPAA includes punishments for anyone caught violating patient privacy.
• Those who do so for financial gain can be fined as much as $250,000 or go to jail for up to 10 years.
• Even accidentally breaking the rules can result in penalties.
HIPAA – Health Insurance Portability and Accountability Act of 1996

- To request a restriction on certain uses or disclosures.
- To choose how to receive health information.
- The doctrine of privileged communication specifies that individuals in a protected relationship, such as a doctor and patient, cannot be forced, even during legal proceeding, to reveal communication between them unless the person who benefits from the protection agrees to it.
Physician and Patient Rights

- Physicians have the right to determine whom they will accept as patients.
- Physicians who have been in practice for a long time may also build up a patient load that is as large as one person can care for adequately.
- Because a physician must care for all patients accepted, it is not uncommon for a physician to decide to see no new patients.
Physician and Patient Rights

• A physician may not refuse to provide emergency service if assigned to an emergency, and most physicians will provide emergency service whenever the need exists.

• Physicians have the right to decide what type of medicine they wish to practice and where.

• They have the right to establish their own working hours, to charge for their services, and to take a vacation if they provide names of qualified substitutes to care for their patients while they are unavailable.
Physician and Patient Rights

- Physicians have the right to change the location of their office, but must notify their patients in advance to give them adequate time to make alternative plans for medical care.

- Patients have the right to receive care equal to the standards of care in the community as a whole.

- Patients have the right to choose the physician from which they will receive treatment from the listing of physicians within their enrolled insurance plan.
Physician and Patient Rights

• A patient may always see any physician they desired as long as they take full responsibility for payment of services rendered; this means that the patient will pay for care received, not the insurance company.

• A patient has the right to accept or reject treatment, and to know whether a prescribed treatment has side effect, what the prognosis is, what effect the treatment will have on the body, and any treatment alternatives.
Physician and Patient Rights

• A physician may choose to withdraw from the care of a patient who does not follow instructions for treatment or keep follow-up appointments or who leaves a hospital against medical advice.

• Withdrawal must be by means of a letter sent by certified mail with return receipt requested as proof the letter was received.

• The return receipt should be filed in the patient’s medical record.
Physician and Patient Rights

• The letter should state the reason for the withdrawal and needs to state the date the withdrawal will become effective.

• If the patient needs follow up, the letter should recommend that the patient make an appointment with another physician.

• It is appropriate to indicate that a copy of the medical records will be sent to the new physician if the patient will send written authorization to do so.
Physician and Patient Rights

• The letter should be signed by the physician.
• A patient has the choice and a right to change physicians.
• The patient should notify the physician, but if this does not take place in a written form the physician may send a letter confirming the dismissal.
• This letter should also be sent by certified mail, return receipt requested, and a copy of the letter and receipt filed in the patients chart.
Physician and Patient Rights

- A physician who has begun care of a patient must carry through until the patient no longer needs treatment or decides to see a different physician, or the physician withdraws from care.
- A physician who has undertaken care of a patient and is then not available to continue that care may be sued for abandonment, unless coverage for the patient by some equally qualified physician is provided.
Physician and Patient Rights

- If a patient is admitted to the hospital and the physician does not see the patient right away to check on the patient’s condition and order treatment, the physician may risk being accused of abandonment by the patient or by the patient’s family.
- If a physician is ill, the office staff must refer patients who need care to other qualified physicians who will care for them.
Physician and Patient Rights

• Physicians are not obligated to provide follow-up care when they see a patient for pre-employment or insurance examinations, or on other occasions when the request comes from someone other than the patient.
Physician and Patient Contract

- The contract between a patient and a physician has three parts:
  - The offer
  - The acceptance
  - The consideration
The Offer

• The offer takes place when a competent individual indicates a desire to become a patient.
The Acceptance

- Takes place when an appointment is given and the physician examines the patient.
The Consideration

• Is the payment given in exchange for services.
• When a patient is a child, the parent is expected to pay. A young person is considered to be a minor until reaching full legal age, known as the age of majority. The statutes defining age of majority vary from state to state.
• The medical assistant must be knowledgeable that many states are reforming laws concerning the rights of minors and medical treatment.
The Consideration

- More than half of the states allow minors the right to consent to medical treatment or consultation for pregnancy, contraception, venereal disease, drug abuse, or alcoholism.
Emancipated Minor

- An emancipated minor is an individual who is no longer under the care, custody, or supervision of parents.
- The emancipated minor may be married, in the armed forces, or self-supporting and living apart from parents.
- An emancipated minor can legally consent to medical care.
Mental Incompetence

• Determined by a court of law.
• Persons deemed this must have an appointed guardian.
• The guardian is responsible for both the payment of bills and the care of the patient.
Consent for Treatment

• The contract between the physician and the patient may be either implied or expressed.

• An expressed, or written contract must be entered into if a third party is to be responsible for payment. If this agreement is not in writing, it is not possible to press for payment.

• The fact that the patient has come to see the physician implies consent for treatment.
Instances in which expressed consent is required:

• Proposed surgery or otherwise invasive treatments such as lumbar punctures, sigmoidoscopies, and biopsies.
• Use of experimental drugs.
• Use of unusual procedures that may involve high risk.
• There are exceptions to the rule for surgery. Minor procedures generally involve only an explanation by the physician and oral consent of the patient. Notes regarding this conversation need to be entered by the physician into the patient’s medical record.
Informed Consent

• Informed consent means that the patient has received and been instructed on the procedure and or treatment to be performed, as well as any side effects, potential complications or results of the procedure and or treatment. The physician is legally obligated to obtain informed consent, this IS NOT the responsibility of the medical assistant.

• Informed consent is necessary to avoid claim of assault and battery or lawsuit.
Medical Assistant Rights

• The medical assistant has the right to be free from sexual discrimination. This may involve a man or woman being refused employment because the job is usually filled by someone of the opposite sex.

• It can involve not receiving promotions, being paid less for the same work, or being treated as inferior in any way.
Medical Assistant Rights

- Title VII of the Civil Rights Act of 1964 defines sexual harassment as, “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission or rejection of this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive work environment.”
Medical Assistant Rights

• Sexual harassment can occur in a variety of circumstances:
  • The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
  • The harasser can be the victim’s superior, an agent of the employer, a supervisor in another area, a coworker, or a nonemployee.
Medical Assistant Rights

• The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
• Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
• The victim has a responsibility to establish that the harasser’s conduct is unwelcome.
Medical Assistant Rights

• A written account of each incident of sexual harassment should be documented with the names of witnesses, date, time, and place of occurrence.
• It is in the victim’s best interest to directly inform the harasser that the conduct is unwelcome and must stop.
• Each instance reported to the authorities is handled on a case-by-case basis and involves a thorough investigation.
The Good Samaritan Act

• Originated in California in 1959 to protect the physician who administers emergency care from liability for any civil damages.
• The physician can help in an emergency without fear of being charged with neglect or abandonment for follow-up care.
• Now all states have Good Samaritan statutes.
The Good Samaritan Act

- The statutes require that emergency care be given to the best ability of the person providing the care.
- In some states, the statute includes coverage for any healthcare professional or citizen with first aid skills.
- The law does not cover physicians if they receive compensation for the emergency care, however.
Statute of Limitations

- A law that designates a specific limit of time during which a claim may be filed in malpractice suits or in the collection of bills.
- Each state is obligated to protect individuals by establishing the statutes that regulate the time period. It is important to research the current law by contacting the state medical association.
The medical office staff must understand the importance of maintaining complete, accurate, up-to-date records on all patients. A patient’s health records must be maintained properly to give adequate healthcare. These records could be used in research into certain illnesses or forms of treatment, and the records must be complete to protect against lawsuits.
Medical Records

• A patient record that would meet criteria would include:
  • Personal information such as full name, address, occupation, marital status, and insurance carrier.
  • Patient’s personal family, sociocultural, and medical history.
  • All details of physical examinations, laboratory and x-ray findings, diagnoses, and treatments;
Medical Records

• Consent forms for procedures done and authorization forms for release of medical information.
• Procrastination cannot be tolerated in handling medical records.
• As legal documents, medical records, are subject to critical inspection at any time.
• Medical history should always be obtained within a private room, or the patient can be asked to complete the information personally.
Medical Records

• Make entries on the patient medical record only as requested by the physician.
• All entries should be factual.
• All results of findings on a patient should be recorded, even if they are normal or negative.
• Errors on medical records must be corrected by drawing a single line through incorrect information and adding your initials, the date, and the reason for the change.
• All prescription refills should be recorded, along with missed appointments, and follow-up.
Medical Records

• Requests for medical information should be recorded along with the information given.

• Any failure to follow treatment or advice of the physician should be noted.

• All notations should be in black ink, as pencil is too easily erased.

• Blue ink, as well as other colors, and pencil do not copy well. This is a concern for duplicating reports and records for referrals.

• Standard abbreviations should be used.
Medical Records

• Upon the death of patient, a copy of the death certificate should be filed in case of subsequent requests for information.

• A quality medical record indicates quality care.

• Medical records are considered the property of the physician who treats the patient. No record should be shown to the patient without the knowledge of the physician, as there may be some reason the patient should not see all of the record.
Medical Records

- Each office should have a written policy regarding releasing information from a medical record. This policy must take into consideration local or state statutes.
- In some states, the legislature has given the patient, the physician, or an authorized agent the right to examine or copy the medical record.
- The requirement of confidentiality regarding the medical record is no longer recognized when the patient initiates a malpractice claim against a physician.
Medical Records

• Any review of the chart by the patient should be done when the physician is present to interpret medical terms or abbreviations.

• Some physicians give patients a copy of their medical records and feel this reduces the anxiety regarding their health.

• For legal and practical purposes, it is a wise practice to ask the patient at the initial office visit who in their family should receive medical information regarding the patient’s health status; then have the patient sign the appropriate form and list all the names provided.
Medical Records

• This directive protects the patient’s confidentiality and will also protect the practice from potential problems if the staff pays attention to this important information.

• It is a good policy to refuse to answer the telephone question as to whether an individual is a patient; a person coming to the office for information regarding a patient should produce an authorization to disclose information before any is given.
Medical Records

• It is important to check the specific details authorized to be released and to ask for photo identification of the individual or organization requesting the information.
• The signed authorization should be placed in the patient chart with a copy of the information released.
• The complete, unaltered medical record is a legal document and is the best defense for a physician who is charged with malpractice.
Medical Records

• The first step a lawyer will take in a malpractice case against a physician is to obtain a copy of the patient’s records and have them examined by an independent physician.
• The following office procedures have caused problems in malpractice suits:
  • Procrastination or delay in filing lab test results or reporting them to the physicians.
  • Incomplete medical records.
  • Illegible records
Medical Records

• Unexplained altered medical records.
• Faking or forging a document or signature.
• Loss of records.
Records Retention

• In addition to having complete, up-to-date records, the medical assistant must be aware of the need for keeping these records even after care has ceased or the patient has died.

• Records should be kept as long as the states designate the length of time records must be kept. Federal law dictates that the office has a responsibility to see that necessary records are kept for any narcotics used in the office. The medical assistant may be responsible for keeping accurate financial records.
Resources