

# Legal Considerations of Psychiatric Nursing Practice



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## KEYWORDS

- Confidentiality • Informed consent • Civil commitment • Liability

## KEY POINTS

- There are major legal issues that affect psychiatric nursing and guidelines for practicing in a legal and responsible manner.
- Advances in understanding of psychiatric conditions and developments in how nurses care for psychiatric patients result in changes in regulations, case law, and policies that govern nursing practice.
- Professional development, keeping abreast of current research and literature regarding clinical practice and trends, and involvement in professional organizations are some of the ways that psychiatric nurses can meet the challenges of their profession.

## INTRODUCTION

The current landscape of health care requires that psychiatric nurses have a wide breadth of knowledge to practice in a responsible and legal manner. The emphasis on participation of informed patients and families within a recovery model, expanding costs and efforts to contain costs, and the goal of exclusively electronic records all add to the demand for knowledgeable nurses. For psychiatric nursing in particular, continuing advances in understanding of mental illness, genomics that relate to mental illness, and debates about patient rights versus societal safety are factors that have an impact on care. With the evolution of psychiatric care, the definition of legal practice also evolves over time. Psychiatric nurses are held accountable to practice according to current laws, regulations, and standards. This article briefly reviews the major legal issues that affect psychiatric nursing practice today.

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## STANDARDS FOR LEGAL PSYCHIATRIC NURSING PRACTICE

Legal parameters for practice are established through a variety of sources. Many measures exist against which a nurse's practice can be judged. State boards of nursing govern the scope of practice within a given state. Federal and state statutes direct practice; for example, virtually all states have laws outlining the reporting of child and elder abuse. Case law (ie, legal findings related to particular court cases) also sets precedence for legal practice; for example, the Tarasoff case of the mid-1970s set a standard of the duty to protect third parties against harm that has become the benchmark in subsequent cases in other states. The Centers for Medicare and Medicare Services (CMS) sets stringent regulations for organizations that receive federal funding; for example, regulations define acceptable inpatient staff-to-patient ratios and proper training and use of seclusion and restraint. The Joint Commission is another body that sets rigorous standards for institutions that seek accreditation.<sup>1</sup> The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is responsible for setting national standards for the security of a patient's electronic health information. All nurses are legally responsible for understanding the rules and regulations that govern this federal legislation.

Psychiatric nurses look to professional nursing organizations to define safe and acceptable practice through published standards. The American Nurses Association, utilizing a task force made of members of the American Psychiatric Nurses Association (APNA) and the International Society of Psychiatric-Mental Health Nurses (ISPN), published the revised of *Psychiatric-Mental Health Nursing: Scope and Standards of Practice*<sup>2</sup> in 2014. This comprehensive document outlines levels of psychiatric nursing practice and identifies specific standards of practice for nursing activities and criteria for measuring the standards.

Key changes in the *Psychiatric-Mental Health Nursing: Scope and Standards of Practice* include

- Emphasis on a recovery model with consumer participation in all aspects of treatment
- Paradigm shift toward prevention with psychiatric nurses promoting protective factors and environments and providing early screening and intervention
- Meeting the challenges of providing mental health care in integrated health care systems<sup>3</sup>

Similarly, the APNA and ISPN also have published standards that guide practice. Involvement in professional organizations can help nurses keep informed of current published standards as well as other issues.

Finally, developments in clinical practice guide legal practice. Advances in the study of the brain and behavior, neurochemical processes, new medications, the field of genetics, and the field of psychiatric nursing are constantly expanding.<sup>3</sup> Psychiatric nurses also continue to develop interviewing skills and therapeutic techniques. In addition to the foundation of knowledge and skills attained through basic nursing preparation, psychiatric nurses should remain current in clinical areas through participating in educational programs and reviewing the literature.

## PATIENT RIGHTS AND NURSING RESPONSIBILITIES

### *Least Restrictive Alternative: Seclusion and Restraint*

The use of seclusion and restraints is strictly regulated and psychiatric nurses are mandated to minimize if not eliminate the use of seclusion and restraint in psychiatric settings in the United States. Health care agency policies and governmental agencies

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