



## Legal Issues: Awareness and Prevention

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After reading the newsletter, the home health aide should be able to:

1. Identify selected common legal terms.
2. List three examples of torts, and the criteria necessary to establish them.
3. Discuss actions that help to avoid legal action in the workplace.

With the steady increase in healthcare-related law suits, all workers in hospitals and other healthcare settings should be familiar with the legal aspects of their jobs. Knowledge of and adherence to legal principles serves to protect the worker, the agency, and the client.



This newsletter will discuss legal issues as they pertain to home health aides. An overview of common legal principles will be presented, as well as several civil actions that may involve clinical healthcare workers. Actions that the home health aide can take to protect him/herself from legal action will also be covered.

### Common Legal Principles

As a home health aide, you may have wondered and/or worried about the possibility of making an error that could result in some type of adverse effect, such as a law suit. Who is responsible if you do make such an error... you, your supervisor, or the agency? Depending on the circumstances involved, the answer could be all of these.

The principle of *respondeat superior*, or "let the master answer", has long been used in the courts. This doctrine states that the employer is responsible for actions of the employees, while within the scope of employment. Therefore, the agency may be held liable for actions of the



staff employed there. This does not relieve the staff member of responsibility, however, since the individuals involved in the situation may also be held liable.

Legal problems can be broadly divided into criminal and civil actions. A criminal action involves the breaking of a law, such as drug diversion or theft of agency property. A civil action, or *tort*, is a wrong committed against a person or property. Examples of torts include fraud, negligence, invasion of privacy, defamation, assault and battery (these last two are also criminal). Torts may be intentional or unintentional.



Let's imagine that a client suffers severe skin injury when an ice pack is left directly on the skin for a prolonged period. In order for any tort to be established in a court of law, these criteria must be met:

- the staff member had a duty to the client (to provide safe cold therapy).
- the staff member failed to carry out that duty (by using the ice pack incorrectly).
- the client was injured or harmed (he suffered skin injury requiring prolonged treatment).
- the injury or harm resulted from the staff member's failure to do his/her duty (the client suffered injury because the staff member used the ice pack incorrectly).

## Legal Pitfalls- Protecting Yourself and Others

There are a number of torts for which healthcare workers may be at risk:

Invasion of Privacy: There has been much attention paid to this area in healthcare, due to the enactment of HIPAA requirements. Invasion of privacy may be charged as a result of giving private client information to those who should not have it. This breach of confidentiality may be intentional... telling a friend about a mutual friend's diagnosis, or unintentional, such as leaving paperwork with sensitive information where others can see it.



Protect yourself by becoming thoroughly familiar with your agency's privacy policies. Know exactly what type of information you are allowed to disclose, such as client name, and what you cannot. If you are ever in doubt, ask your supervisor before disclosing the information. Never assume that you can share protected health information with family members, such as when the client's sister comes for a visit and says, "How's my brother doing?" Share information only with healthcare providers currently participating in the client's care, and anyone the client has listed on his/her HIPAA form as an approved contact. Don't be afraid to verify the identity of people asking for information if you do not know them. Never give information to reporters or lawyers unless you are directed to do so by agency administration. Be very careful, also, with written forms of communication. Always log off from your laptop after use, and do not leave papers with personally identifiable information where family members, visitors or others might see them.

Negligence: This is failure to use reasonable care, or to perform in a manner that a reasonably prudent person doing that job would. As a home health aide, your conduct in a court of law would be measured against the actions of a "reasonably prudent" home health aide in a similar situation. Negligence may result when you take an action that you shouldn't, or when you don't take an action that you should have. For example, a home health aide who does not call the agency or 911 when a client has a sudden and obvious emergency condition may be held liable for negligence if the client suffers damage as a result.

To prevent this possibility, be very familiar with the duties outlined in your job description, and always operate within these limits. Make sure you have received training on all job aspects, and don't attempt to perform any tasks or client care for which you have not been trained. For example, if you are

asked to provide wound care for a client, but have not been trained to do this, then do not provide this care, regardless of who asks you to. Any time that you have a question or concern about a task you are assigned, discuss this with your supervisor, to avoid errors. Complete all documentation according to agency policy. If a mistake is made in documenting, follow agency policy when correcting it. An error is usually corrected with a single line through it, a written correction above it, and the writer's initials. Never erase, blacken, or use correction fluid on an error, as this may cause legal problems.

Pay special attention to safety issues. If you see spills or other hazards in the home, correct them or notify the agency. Also use care when communicating with clients and their family members and visitors. Keep communication on a professional level, and treat everyone with courtesy and respect. Never give your opinions or advice to clients or visitors, especially related to their healthcare.

Defamation: This is communication that is false and causes harm to one's reputation or character. The term *slander* is used if the defamation is in spoken form, and *libel* if in writing or pictures. For example, the mother of a pediatric client overhears a staff member talking on the phone about her... "I know that mother has abused her son. She should be in jail." Diagnostic tests have shown, however, that the child has defective bones, and was not abused. The mother could then charge the staff member with slander. Always keep your conversations with others, including clients, visitors, and other staff members, on a professional level. Do not offer opinions on the performance of others when this is not your job.

## General Considerations

You can help to avoid the possibility of legal action by adhering to your job description, performing your job in an accurate and efficient manner, protecting client privacy, and conducting yourself in a professional manner at all times. Your relationships with others can also greatly affect whether legal action occurs or not. Treat all clients and visitors with respect, care, and warmth. Even when an adverse outcome occurs, clients are less likely to bring legal action if they have been treated in a kind and respectful manner, and they feel that staff have tried to meet their needs.



By maintaining a good knowledge base and awareness of legal issues, you can help to protect the client's rights, as well as protecting yourself and those around you from possible legal action.



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NAME: \_\_\_\_\_ DATE: \_\_\_\_\_ UNIT: \_\_\_\_\_

Directions: Place the letter of the one best answer in the space provided.

- \_\_\_\_ 1. If a home health aide makes an error at work resulting in legal action, the home health aide cannot be held individually responsible, since the agency is liable for the employee's actions.
  - A. True
  - B. False
  
- \_\_\_\_ 2. Which of the following is considered a tort in legal terms?
  - A. running a red light in a car
  - B. underage possession of alcohol
  - C. assaulting a person
  - D. all of the above
  
- \_\_\_\_ 3. Which of the following is NOT essential to establish a tort in a court of law?
  - A. the person charged with the tort had a duty
  - B. the duty was not carried out
  - C. failure to carry out the duty was intentional
  - D. harm resulted from failing to perform the duty
  
- \_\_\_\_ 4. Which of the following actions is most helpful to prevent a charge of invasion of privacy?
  - A. verify the identity of people asking for client information
  - B. document according to agency policy
  - C. behave with courtesy and kindness toward others
  - D. watch for and correct any safety hazards
  
- \_\_\_\_ 5. A home health aide leaves a weak and unsteady client sitting on the side of the bed while she leaves to get bed linens. The client falls and breaks his hip. The home health aide could be charged with:
  - A. negligence
  - B. defamation
  - C. invasion of privacy
  - D. slander

- \_\_\_\_\_ 6. A staff member says to a client's family, "I'm so sorry you're going through this—it must be very difficult to have a loved one with AIDS." The family did not know the diagnosis, since the client was careful to keep this information from them. The staff member's actions are most likely to result in a charge of:
- A. negligence
  - B. defamation
  - C. invasion of privacy
  - D. slander
- \_\_\_\_\_ 7. Carol, a home health aide, noticed that one of her church members was just admitted to the home care agency where she works. Carol asks her pastor and other church members to pray for the client because he has cancer. This disclosure is permitted, since it is for religious reasons.
- A. True
  - B. False
- \_\_\_\_\_ 8. A staff member is talking to a co-worker on the phone about the client she is currently visiting. She says, "I can't believe the Jackson's haven't fired their quack doctor. I heard he ordered the wrong drugs for Mr. Jackson, and he's probably killed several other clients." As the staff member turns around, she sees Mrs. Jackson standing there with a shocked expression on her face. The staff member's action most likely constitutes:
- A. slander
  - B. libel
  - C. negligence
  - D. none of the above—the staff member was simply voicing an opinion
- \_\_\_\_\_ 9. To establish a charge of negligence on the job, a home health aide's performance would be measured in a court of law against which of the following:
- A. any healthcare provider working in the agency
  - B. a citizen of the US
  - C. a reasonably prudent person of the same age
  - D. a reasonably prudent home health aide in a similar situation
- \_\_\_\_\_ 10. A person who takes no action in a situation cannot be charged with negligence.
- A. True
  - B. False

