



Risk Management Issues for Nursing Homes

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Risk Management 101

- Learn legal strategies to avoid litigation, protect your professional license and learn what to say when addressing complaints
- Nursing Home Administrators
- Directors of Nursing



Risks Affecting Long Term Care and Nursing Homes

Complex Highly Regulated Environment

- OHFLAC
- BMS
- Fraud and Abuse
- Subpoenas and search warrants
- Malpractice and patient abuse
- HIPAA/HITECH/EHRs
- Complaints
- Professional ethics



Professional Ethics

- Nursing Home Administrators
- RNs—Bd. Examiners for RNs
- LPNs—Bd. Examiners LPNs
- PTs—Bd. Of Phys. Ther.
- OTs—Bd. of Occupat. Therapy
- Speech—Speech-Lang. Path.
- MDs—Board of Medicine
- Pharmacy—Board of Pharmacy
- Resp. Therapy—Bd. Resp. Care
- Social Workers—Bd. Social Work Ex.

Your Success Depends Upon Achieving Compliance

- Develop a comprehensive compliance program that addresses all areas of regulatory and legal risk
- Educate management and staff on compliance issues
- Develop a culture of compliance
- Develop processes to continually monitor for compliance issues and implement proactive solutions
- Take swift effective action when events occur

Nursing Home Administrators

Professional misconduct or unprofessional conduct means:

- Obtaining a license by means of fraud, deceit or intentional misrepresentation;
- Engaging in deceit, fraud, or intentional misrepresentation in the course of providing professional services or activities;
- Failing to exercise a professional regard for the safety, health and life of the patient;

Nursing Home Administrators

- Discriminating in respect to patients, employers, or staff on account of race, religion, color, national origin or sex; and
- Failing to comply with the Code of Ethics.
- American College of Health Care Administrators (1989)
- WVC 30-1-1, et seq. and 21-1-1, et seq.

Directors of Nursing

Professional misconduct includes:

- failed to adhere to common and current standards for professional nursing practice;
- failed to adhere to established standards in the practice setting to safeguard patient care;
- knowingly committed an act which could adversely affect the physical or psychological welfare of a patient;
- abandoned patients by terminating responsibility for nursing care, intervention, or observation without properly notifying appropriate personnel and ensuring the safety of patients;

Directors of Nursing

- Practiced beyond the scope permitted by law or professional responsibilities that the licensee knows that he or she is not licensed, qualified, or competent to perform;
- impersonated another licensed practitioner;
- permitted another person to use the licensee's license for any purpose;
- permitted, aided, or abetted an unlicensed, uncertified, or unregistered person to perform activities requiring a license, certificate, or registration;

Directors of Nursing

- delegated professional responsibilities to a person when the licensee knows or has reason to know that person is not qualified;
- practiced registered professional nursing while his or her license is suspended, lapsed, or inactive;
- failed to comply with terms and conditions as may be imposed by the board;

Directors of Nursing

- practiced professional nursing while the ability to safely and effectively practice is compromised by alcohol or drugs;
- is addicted to a controlled substance;
- is a chronic or persistent alcoholic;



Directors of Nursing

- engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member of the public; ... not exercising good professional character;
- practiced professional nursing while the ability to safely and effectively practice was compromised by physical or mental disability;

Directors of Nursing

- refused or failed to report for a physical or mental examination, including but not limited to laboratory or other tests, requested by the board;
- provided false or incorrect information to an employer or potential employer regarding the status of a license, or failed to inform an employer or potential employer of a change in the status of a license;

Directors of Nursing

- knowingly falsified an application for employment;
- knowingly provided false information regarding completion of educational programs;
- falsified patient records, intentionally charted incorrectly;
- improperly, incompletely, or illegibly documented the delivery of nursing care, including but not limited to treatment or medication;

Directors of Nursing

- knowingly made or filed a false report;
- knowingly or negligently failed to file a report or record required by state or federal law;
- willfully impeded or obstructed the filing of a report or record required by state or federal law;
- induced another person to file a false report or obstructed the filing of a report required by state or federal law;

Directors of Nursing

- failed to report to the board within thirty (30) days, knowledge of a violation by a registered professional nurse.....;
- failed to report ...a violation of any applicable state law or rule, any applicable federal law or regulation or the incompetent, unethical, illegal, or impaired practice of another person who provided health care;
- impeded or obstructed an investigation by the board by failing to comply or respond to requests for action or information, whether the failure was known or negligent;

Directors of Nursing

- violated...rules governing the practice of registered professional nursing, or a rule or order of the board, or failed to comply with a subpoena or subpoena duces tecum issued by the board;
- failed to register or notify the board of any changes of name or mailing address;
- failed to accept certified mail from the board, when mailed to the licensee's last address on record in the board's office;

Directors of Nursing

- failed to disclose to the board a criminal conviction in any jurisdiction;
- was convicted of a misdemeanor with substantial relationship to the practice of registered professional nursing, in a court of competent jurisdiction;
- failed to disclose information when required by the board concerning treatment or counseling for substance abuse, or participation in any professional peer assistance program;
- provided false information on any application, or any other document submitted to the board for the purpose of licensure, advanced practice recognition, or prescriptive authority;

Directors of Nursing

- misappropriated medications, supplies, or personal items of a patient or employer;
- self-administered ...any prescription drug in any way not in accordance with a legal, valid prescription or used any illicit drug;
- prescribed, dispensed, administered, mixed or otherwise prepared a prescription drug...not in accordance with accepted nursing practice standards or ...the the board's rule Limited Prescriptive Authority For Nurses in Advanced Practice,
- physically or verbally abused, or failed to provide adequate protection or safety for an incapacitated individual ...

Directors of Nursing

- used the nurse-patient/client relationship to exploit a patient or client;
- engaged a patient or client in sexual activity or became romantically involved with a patient or client while still responsible for the care of that patient or client;
- failed to maintain appropriate professional boundaries in the nurse-patient/client relationship;
- failed to report that his or her license to practice registered professional nursing in any other state, territory, jurisdiction or foreign nation was revoked, suspended, restricted or limited....

Directors of Nursing

- violated ...confidentiality...concerning a patient;
- practiced registered professional nursing by way of telecommunications or otherwise, in any other state, territory, jurisdiction, or foreign nation, without a license...; or
- was found guilty for improper professional practice or professional misconduct by a duly authorized professional disciplinary agency or licensing or certifying body or board in this or another state or territory...which ...would, if committed in this state, constitute professional misconduct under the laws of this state...

Documentation

- Be familiar with requirements for certification and reimbursement
- Documentation in medical records is an end and not a means
- Maintain accurate and complete medical records—if it is not documented it did not happen
- Have policies that require accurate, complete and timely completion of medical records
- Self-audit medical records and other compliance

Documentation

- When supplementing medical records, do so in an accurate and clear manner
- Security and privacy audits
- Minimum necessary disclosures
- Uses--Need to know
- Records disclosure policies
- Develop a clear records retention policy
- Don't destroy records once you receive notice of audit or litigation
- Privacy and Breach Notification Policies

Compliance Team

- Develop an effective compliance program
- Designate and train an effective compliance team
- Designate who should communicate with regulators, attorneys and the press
- Underscore compliance and quality of care are highly valued
- Make sure you understand what is being asked
- Answer only the question being asked



Compliance Team

- Quickly seek legal advice if you are unsure of whether and how to respond
- Answer truthfully
- Don't guess or assume
- If you don't know--find someone who does
- Respond to complaints internally and from patients and their families
- Develop and maintain a good rapport with regulators
- Don't deny proper access to records or patients

Compliance Team

- Make sure compliance incorporated into policies and job descriptions
- Investigate all issues of alleged non-compliance
- Consistently discipline employees with compliance issues
- Seek advice before firing the whistle-blower





Thanks!!!

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