

LPN CERTIFICATION PREP COURSE CLASS #5 Libel, Liability, HIPAA, Time Mgmt.

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OBJECTIVES

- ▶ Define the Role of the LPN in Monitoring Staff.
- ▶ List the Perks of Working in Long Term Care.

DISCLOSURE STATEMENT

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- This nursing continuing professional development activity was approved by the Ohio Nurses Association, an accredited approver by the American Nurses Credentialing Center's Commission on Accreditation. (OBN-001-91) 2022-0000000716 Approval valid 2 years from Dec.19, 2022. Expires on Dec. 19, 2024.

Libel and Liability

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- **Liability:** A comprehensive legal term that describes the condition of being actually or potentially subject to a legal obligation.
- **Libel:** The definition of libel is a written and shared false statement about someone that damages their reputation. An example of libel is when someone publishes in the newspaper that you are a thief, even though this is false.
- An example of Libel that could affect you in the workplace are:
- Giving out more information than company policy directs for a Reference check.
- There are no federal laws preventing people from giving you more info on your candidate, just company policies aimed at reducing risk of liability for discrimination and/or defamation. And with good reason.

Libel/Liability (Cont'd)

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The EEOC (Equal Employment Opportunity Commission) secured \$484 million for victims of discrimination in the workplace in 2017, and for many companies, these risks outweigh the benefit of providing a detailed reference for former employees. There is not a law that says you cannot provide more information than dates of hire, however:

- Company policy normally states only give dates of hire unless you have written consent from the employee, or you could be Libel.
- An employee, terminated from employment, sends out a letter to families stating the director may try to steal the tenants' funds: This is another example of Libel as the information is false.

Scenario

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An employee on your shift reports for duty and appears to be intoxicated. Her speech is slurred, and she is not able to keep her balance well. You are the Charge Nurse on the shift for the facility. You try talking to the employee to determine what is going on. She refuses and states she is leaving. You are afraid she is not safe to drive so you grab her car keys and lock her in the breakroom until you can call the Administrator/DON. You assume the employee is under the influence of something.

In this scenario, do you believe you did the right thing from a legal standpoint?

You actually could be accused and Libel of False Imprisonment.
What might have been a better way to have handled the situation?

HIPAA (Health Insurance Portability and Accountability Act)

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- A federal law in 1996 that required the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge.
- Federal law related to HIPAA protect a person's identifiable health information that is:
 - Documented on any paper
 - Transferred electronically
 - Communicated orally
- If a patient would like a copy of their medical record, the provider may charge a fee for the copying and has 30 days after the request to send the medical record.
- It is a violation of HIPAA confidentiality to give medical information to anyone besides the patient unless the patient has consented to this information being shared and with whom it may be shared. Usually consent is signed on admit to share healthcare information with insurances, hospital, and the medical providers.

Record Release: Some Facts

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- If a patient would like a copy of their medical record, the provider may charge a fee for the copying and has 30 days after the request to provide the medical record. A provider may ask for a consent to be signed for the release. The Medical Record is a legal document, and the patient has the right to receive it.
- If you receive a Subpoena for a medical record you need to contact your legal counsel, but the documents requested must be submitted. You can charge a fee for copying.
- If a person requests a copy of a medical record as the Power of Attorney, they need to show proof of this Power. There are many types of Power of Attorney Forms and not all are medical. Once a person dies, the Power of Attorney for Medical care is no longer valid.

The LPN and Monitoring Staff Performance

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- ▶ Your role as the LPN in charge of a Unit on their shift likely will include overseeing the nursing assistants on that Unit on that shift.
- ▶ You will want to be sure you are clear from reviewing your job description which should include your duties as far as monitoring or overseeing staff on your shift.
- ▶ Find out this information when interviewing for the position, or if already employed, talk to the DON if you are not clear on the expectations.
- ▶ In most facilities, an LPN oversees the nursing assistants on her shift in the absence of an RN. They may also oversee other LPN's on other units if they are designated as the Charge Nurse for that shift.
- ▶ The LPN may be asked to participate in performance reviews and/or corrective action sessions along side the RN.
- ▶ Other times the LPN is asked to give input regarding a particular nursing assistant they have monitored, but do not participate in any performance reviews or corrective action sessions.

Monitoring Staff Performance

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- ▶ Your role as an LPN would include assuring nursing assistants assigned to your Unit are performing their duties as trained and assigned. Just as the RN supervises the LPN, the LPN monitors the nursing assistants on their Team. Some processes that would be included in assisting with a performance review could be periodic:
 - ▶ Direct Supervision of their work.
 - ▶ Interview residents, families/visitors
 - ▶ Get input from your Supervisor on the employee's performance including any concerns mentioned at QA or repeated Incident Reports.
 - ▶ Discussions with the staff member themselves to get their take on how they feel their work performance is going and if they need any additional training or guidance.
 - ▶ Conduct regular task competencies which include return demonstrations to assure staff are aware and understand the tasks they are performing.
 - ▶ When assisting with completing performance reviews, the same criteria should be used for each person within that job classification.

Monitoring Staff Performance (Cont'd)

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- ▶ If you discover an employee has performance issues, depending upon the actual scenario(s), you may need to provide re-education. (If this is part of your Job Description). You should be sure the employee was provided training on the areas of poor performance before giving or recommending a counseling or disciplinary action. Some key process tips could be:
 - ▶ Review the areas of concern and ask for feedback from the employee on how they think they could improve.
 - ▶ Redo any competencies related to the work concerns. (If this is part of your job description)
 - ▶ Suggest to your Supervisor the employee may benefit from some additional time to shadow with another employee who is experienced and competent.
 - ▶ There are times you may be invited to be a part of a performance review discussion when a staff person just sits in silence. It may be apparent they are ill-prepared for this meeting, and it could be for a variety of reasons. The best way to handle this situation would be to suggest to your supervisor in private it might be best to schedule another time to meet with them so the employee can come prepared and gather their thoughts.

Monitoring Staff Performance (Cont'd)

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- ▶ Example of interaction that may occur with an employee work performance issue:
- ▶ There may be times when a staff person on your Team is deserving of a disciplinary action for documented actions such as excessive tardiness as indicated by timecard punches. You may be asked to be involved in this discussion by the RN Supervisor or DON.
- ▶ Sometimes with a disciplinary action, the person will try to pull others into the infraction in order to draw attention away from their actions.
- ▶ They may say it is "unfair" as others do the same thing.
- ▶ Others should not be the focus of an individual's disciplinary action.
- ▶ The RN or DON should respond by keeping the focus on the task at hand letting them know the meeting today is to discuss their infraction.

Monitoring Staff Performance (Cont'd)

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- ▶ Tasks assigned to staff are often referred to as "Duties". The legal definition of "Duty" is the "Relationship between staff and resident that implies care can be expected to be given."
- ▶ The LPN in charge in the absence of an RN needs to assure the residents are receiving the care they need by the direct care staff or nursing assistants on their Team.
- ▶ The LPN on a Team with nursing assistants needs to be aware of what is happening on the shift.
- ▶ It is not an acceptable standard of practice for the LPN to pass medications and treatments alone and be totally detached from the care the residents they are overseeing on the shift need.
- ▶ Communication with the staff is critical for success. Great communication has been referred to as "A dynamic process whereby messages are exchanged between individuals." You CAN make a difference!

Monitoring Staff Performance (Cont'd)

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- A practice that can affect work performance is Time Management. Some staff need guidance with improving Time Management.
Which of these examples **does not indicate** good Time Management:
 - A. The nurse who is with a resident but returns phone calls as soon as she is finished with assisting the resident.
 - B. The nurse who prioritizes her work at the start of the shift.
 - C. The Bookkeeper who opens the mail after her bookkeeping duties are completed.
 - D. The nursing assistant who gathers her supplies separately as she needs them for each aspect of AM care for one tenant.

Time Management (Cont'd)

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 - D. The nursing assistant who gathers her supplies separately as she needs them for each aspect of AM care for one tenant.
- If you selected D, you are correct. The nursing assistant may need a priority list of tasks and/or education on how to make the most of their time by gathering all supplies at once that might be needed for AM care for example. Not all people are organized thinkers and may need help becoming more efficient.

Exchanging Shifts

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- ▶ Shift exchanges is an area where there can be confusion and can sometimes cause an uncovered shift.
- ▶ It is important to follow the policy and procedure on shift exchanges that is documented and shared with all staff.
- ▶ It is also important to know you do not need to feel pressured when asked to exchange a shift.
- ▶ The best response from a request for an exchanged shift you cannot cover is to be honest and direct and simply say "I'm sorry but I am unable to work Saturday for you."
- ▶ Staff do not owe an explanation to a co-worker for why they cannot exchange a shift.

SOME FACTS ABOUT WORKING IN LONG TERM CARE

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- ▶ A large percentage of LTC residents, usually over 80%, have their stay paid for by Medicaid. (once called Welfare). Medicaid is based upon income.
- ▶ Even those residents who have a large savings could eventually run out of funds and need Medicaid to pay their bill at the nursing home. It can cost over \$3500.00 a month to live in a nursing home.
- ▶ Medicare A only pays for a short period of time, and the resident must have a 3 day hospital stay before coming to the nursing home and must require some type of skilled care. Medicare does not pay for custodial care. Medicare A pays only 100 days per spell of illness and only pays totally the first 20 days of the stay. The other 80 days are paid 80% by Medicare A and 20% by either a secondary insurance or by Medicaid, depending on what the resident has for insurance.

FACTS (Cont'd)

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- ▶ Medicare B is for things like therapy done less than 5 days a week, certain supplies like ostomy supplies, tube feeding supplies, catheters, MD visits.
- ▶ Part D Medicare is the Drug Plan for people eligible for Medicare A.
- ▶ Some people have LTC Insurance, but it is very expensive and often does not cover many inpatient days.
- ▶ Many people do not have a favorable opinion of nursing homes. Most of these people have never had a loved one in a nursing home and base their opinions on what they read in the media.
- ▶ State and Federal Surveys occur every year and the purpose is to assure facilities are complying with the regulations.
- ▶ Nursing Homes are regulated 2nd highest than any other industry except for Nuclear Power Plants.

The MDS or Minimum Data Set

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- ▶ The daily rate a facility will be paid is based upon the information entered on the MDS or Minimum Data Set. This information is submitted to CMS and a category assigned to that resident based on the information entered.
- ▶ The MDS is overseen by a Registered Nurse.
- ▶ Some facilities do have an LPN completing either the focused Assessments done to support the clinical data entered on the MDS or have the LPN actually enter the data.
- ▶ If an LPN enters the MDS clinical data on an MDS, the RN is required by regulation to review the data entered and co-sign that MDS.

FACTS (Cont'd)

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- ▶ All staff in a nursing home must follow all public laws, private laws, and LTC Regulations.
- ▶ All nursing homes are required to have Policies and Procedures to guide staff on best practices for accomplishing tasks. The Policy states the purpose, and the procedure gives you the step-by-step guidance.
- ▶ In recent years, Nurse Practitioners have been assigned to a LTC facility for as many as 5 days a week. This has taken the load off the physicians, but also assisted staff greatly with care decisions at the facility, and in a more timely manner.

PERKS OF WORKING IN LTC

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- ▶ 1. You get to know your residents.
- ▶ 2. There are not other disciplines such as an IV Team, a Respiratory Team, (unless you have a Ventilator Unit), or Interns to step in and handle higher acuity resident situations. Because of this, you have a greater opportunity to learn and do a lot more for your residents. (Many times, more acuity driven care than on a Med/Surg Unit at a hospital).
- ▶ 3. You are the eyes and ears of the physician. Many orders for care and treatment are made over the phone, based upon what you observed, assessed and reported.
- ▶ 4. You get to know the families. They are so very grateful (the majority of the time).
- ▶ 5. You make work friends for life.
- ▶ 6. There are several continuing education programs offered. Some are required by regulation and others are just important best practices.

Some facts about Resident Rights

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- ▶ Residents have many legal Rights in a LTC facility. Some of those include:
- ▶ Residents have the right to be informed of changes in rooms or roommates.
- ▶ They have the right to have a visitor and close the door.
- ▶ They have the right to refuse treatment.
- ▶ They can self-administer their medications if assessed to be safe.
- ▶ They cannot however, refuse to pay their bill. (you cannot discharge a resident to an unsafe environment for non-payment, however, you can contact the Ombudsman and County Social Services to assist in looking for placement, or to help get the bill paid.)

RESOURCES

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- ▶ American Heart Association= https://www.heart.org/ds/groups/heart-public/@wcm/@sop/@smi/documents/downloadable/ucm_472923.pdf
- ▶ Merck Manual= <https://www.merckmanuals.com/home/heart-and-blood-vessel-disorders>
- ▶ National Library of Medicine= <https://www.ncbi.nlm.nih.gov>
- ▶ American Academy of Sleep Medicine= sleepeducation.org
- ▶ National Institute on Aging= <https://www.nia.nih.gov/health/urinary-incontinence-older-adults>
- ▶ Cleveland Clinic= my.clevelandclinic.org
- ▶ Mayo Clinic= <https://www.mayoclinic.org/diseases-conditions/diabetes/symptoms-causes/syc-20371444>
- ▶ Medical News today= [Medicalnewstoday.com](https://www.medicalnewstoday.com)
- ▶ NCAL= www.ahcouncil.org/slides
- ▶ Medicare= [MedicareAdvocacy.org](https://www.medicareadvocacy.org)
- ▶ CMS= [CMS.gov](https://www.cms.gov)
- ▶ Minnesota Dept. of Health= www.health.state.mn.us
- ▶ US Pharmacist= uspharmacist.com
- ▶ Immunize= immunize.org/states
- ▶ World Health Organization= www.who.int

RESOURCES (Cont'd)

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- ▶ Allied Health Schools www.allalliedhealthschools.com/specialties/lpn-training/
- ▶ MN Statute Revisor Office: www.revisor.mn.gov/statutes/?id=148.171

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THIS IS THE END OF CLASS #5 AND THE END OF THE LPN CERTIFICATION PREP COURSE!

- ▶ QUESTIONS?
- ▶ Nancy Tuders, nancy@nadona.org
- ▶ Cindy Fronning, cindy@nadona.org
- ▶ NEXT PLEASE GO TO AND TAKE THE QUIZ FOR CLASS #5.
- ▶ I've enjoyed spending this time with you. LPN's are invaluable to the care needed in our nation's Nursing Homes. Contact NADONA to now be eligible to purchase and take the LPN Certification Exam.

▶ THANK YOU!!