

# THE DNP AND QUALITY IMPROVEMENT - DNPS WORST NIGHTMARE

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# ACKNOWLEDGEMENTS



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## ACKNOWLEDGMENTS



GETTING TO KNOW YOU

# INTRODUCTION

This Workshop seeks to educate, equip and update the Doctors of Nursing Practice (DNPs) by providing basic understanding of ways in which DNPs can identify, address and promote health policies which facilitate quality improvement in a variety of health care settings. Specifically, this lecture will identify and apply rules of law and concepts regarding nursing ethics, as a means to promote quality of care in situations which might require Qui Tam (whistle blower) rules, risk management protocol and compliance interventions strategies to prevent fraud within a health care delivery setting.



# UNDERSTANDING THE TERMS AND THEIR MEANINGS – LAYING THE FOUNDATION



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# GLOSSARY TERMS RELATED TO THE CONCEPT OF QUALITY OF HEALTHCARE

- Accreditation
- AHRQ: Agency for Healthcare Research & Quality
- Benchmarking
- Best Practices
- Continuous Quality Improvement (CQI)
- Core Measures
- Hospital Quality Alliance (HQA)
- Incident Reporting
- Indicator
- Institute for Healthcare Improvement (IHI)

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# GLOSSARY TERMS RELATED TO THE CONCEPT OF QUALITY OF HEALTHCARE

- The Joint Commission
- Leapfrog Group
- Licensure
- Magnet Hospital Status
- Measure
- Measurement
- Morbidity (state of illness) – comorbidity (multiple illnesses)
- Mortality (state of death)
- National Patient Safety Goals (NPSG)
- National Quality Forum (NQF)



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# GLOSSARY TERMS RELATED TO THE CONCEPT OF QUALITY OF HEALTHCARE

- ORYX/Performance Measurement
- Outcome
- Outcome Measure
- Patient Safety
- Patient Satisfaction
- Patient Values
- Patient-centered Care
- Performance Measure
- Process Measure
- Process of Care

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# GLOSSARY TERMS RELATED TO THE CONCEPT OF QUALITY OF HEALTHCARE

- Protocol
- Quality
- Quality Assessment
- Quality Assurance
- Quality Improvement
- Quality Improvement Organization (QIO)
- Quality Indicator
- Quality Management
- Quality Measure
- Quality Monitoring
- Quality of Care

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# GLOSSARY TERMS RELATED TO THE CONCEPT OF QUALITY OF HEALTHCARE

- Root Cause Analysis (RCA)
- Safe Practices
- Safety
- Safety Culture
- Satisfaction Measures
- Sentinel Event
- Six Sigma
- Standard of Care
- Total Quality Management (TQM)

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## WHY ARE THESE TERMS IMPORTANT?



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# THEMIS, JUSTICE AND HEALTHCARE – A LEGAL INTERPRETATION OF LAW AND FACTS



# WHAT IS A LAW?

- **Black's Law Dictionary defines a law as:**

That which has been laid down, ordained or established. A rule or method according to which phenomena or actions co-exist or follow each other. Law, in its generic sense is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force. That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law.

- **Sources of law:**

- (a) Constitutions;
- (b) Statutes;
- (c) Administrative regulations;
- (d) Common law;
- (e) Case law.

# RULES OF LAW AND PROFESSIONAL STANDARDS IMPACTING DELIVERY OF HEALTH CARE

- Particular rules of law govern professional licensure, accreditation, scope of practice, individual rights in health care, health insurance/malpractice insurance, tort liability of hospitals and health care providers, among other areas beyond the scope of this lecture.
- It is important for Doctors of Nursing practice (DNP)/Advanced practice nurses (APRNs) to be familiar with certain laws:
  - a) State licensure laws for APRNs which specifically define scope of practice within a state;
  - b) State compact laws;
- Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- Health Information Technology for Economic and Clinical Health Act (HITECH).

# DNPS WORST NIGHTMARE – A LAWSUIT





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## WHAT IS A LAWSUIT?

- The civil or criminal court proceedings that constitute a case in court from beginning to end, including formal notices required to be given which compel a party to appear in court (the legal process). (Black's Law Dictionary 2nd Ed.)

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# COMMON LAWSUITS RELATED TO ISSUES OF QUALITY

- Medical malpractice;
- Medicare fraud (Qui Tam Actions);
- Negligence vs Gross negligence (safety);
- Licensure (scope of practice);
- Reporting statutes;
- HIPAA Breach.

# SPECIFIC EXAMPLES

- Medical malpractice: DNP prescribes wrong medication resulting in serious harm to the patient;
- Medicare fraud:
  - a. pharmacy bills for a higher tier medication when they could have opted for a lesser expensive one;
  - b. an ambulance is called when the patient was well enough to take other transportation;
  - c. DNP/APRN/MD/PA (and others) ‘padding” of medical bills;
  - d. DNP/APRN/MD/PA (and others) bills for medications, procedures, appliances that are unnecessary;
  - e. Billing for unnecessary diagnostic procedures
- Negligence vs Gross negligence: failure to implement side rails or restraints (nursing homes) vs. failure to monitor the patient (sleeping during work hours (Andy Warhol) or COVID-19 nursing homes);
- Insurance fraud.

# SPECIFIC EXAMPLES

- Licensure (scope of practice “SOP”): SOP laws vary from state to state. Overlap in compact states. Exceeding SOP;
- Reporting statutes (failure to report);
- HIPAA breach: No valid risk assessment; Sharing protected health information (PHI); Snooping on PHI; Incorrect disposal of PHI; Insufficient PHI access controls; Failure to encrypt PHI; Breach Notification – (Failing to notify of a HIPPA breach within 60 days); Incorrect Handling of PHI; Unauthorized Disclosure (Some regulation waivers in place during the global pandemic); Limited Logging.

**Figure 2.2 The Quality Assurance Triangle**



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# QUALITY COMPLIANCE OR LACK THEREOF: WHAT IS THE LAWYER OR CHIEF COMPLIANCE OFFICER LOOKING FOR? THE DISCOVERY PHASE OF LITIGATION

- Overall management and adherence to the corporate or subsidiary compliance program;
- Compliance with standards, policies and procedures, including but not limited to Compliance Process, Code of Ethics, The Joint Commission, HIPAA and Federal False Claims Act;
- Facilitation of procedures to reduce identified problem areas;
- Employee education regarding compliance with all laws, regulations and guidelines;
- Compliance activities that include medical records, billing records; insurance.

# QUALITY COMPLIANCE OR LACK THEREOF: WHAT IS THE LAWYER OR CHIEF COMPLIANCE OFFICER LOOKING FOR? THE DISCOVERY PHASE OF LITIGATION

- Violations of the Federal Anti-Kick back Statutes (AKS) and Stark Law which prohibits medical providers from paying or receiving kickbacks, remuneration, or anything of value in exchange for referrals of patients who will receive treatment paid for by government healthcare programs such as Medicare and Medicaid, and from entering into certain kinds of financial relationships (Qui Tam Actions);
- Workplace safety issues;
- Intervention strategies to prevent claims and minimize losses;
- Internal investigations related to audits, compliance reports, reports of problems, suspected violations and corrective measures taken.

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# ANA CODE OF ETHICS (2015) WHICH FACILITATE ETHICAL DECISION MAKING

1. The nurse practices with compassion and respect for the inherent dignity, worth, and unique attributes of every person;
2. The nurse's primary commitment is to the patient, whether an individual, family, group, community, or population;
3. The nurse promotes, advocates for, and protects the rights, health, and safety of the patient;
4. The nurse has authority, accountability, and responsibility for nursing practice; makes decisions; and takes action consistent with the obligation to provide optimal patient care;
5. The nurse owes the same duties to self as to others, including the responsibility to promote health and safety, preserve wholeness of character and integrity, maintain competence, and continue personal and professional growth.



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# ANA CODE OF ETHICS

6. The nurse, through individual and collective effort, establishes, maintains, and improves the ethical environment of the work setting and conditions of employment that are conducive to safe, quality health care;
7. The nurse, in all roles and settings, advances the profession through research and scholarly inquiry, professional standards development, and the generation of both nursing and health policy;
8. The nurse collaborates with other health professionals and the public to protect human rights, promote health diplomacy, and reduce health disparities;
9. The profession of nursing, collectively through its professional organization, must articulate nursing values, maintain the integrity of the profession, and integrate principles of social justice into nursing and health policy.

# WHISTLEBLOWER STATUTES AND LEGAL DUTY TO REPORT

- Whistleblower (Qui Tam Actions) provide an invaluable public service;
- Report fraud (insurance or other types of fraud), waste and abuse;
- Whistleblowers are legally protected by state and federal laws from retaliation for making a disclosure of wrongdoing;
- *Section 2302(b)(8) of Title 5, United States Code*, as amended by the Whistleblower Protection Act of 1989 and the Whistleblower Protection Enhancement Act of 2012 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats);
- The Occupational Safety & Health Act is a federal law that protects workers from retaliation for complaining to their employer, OSHA, or other government agencies about unsafe conditions in the workplace.

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# HOW TO MAKE A PROTECTED DISCLOSURE

A disclosure is protected if it meets two criteria:

- The disclosure must be based on a reasonable belief that wrongdoing has occurred.
- The definition of wrongdoing can vary depending upon your place of employment.

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# BRINGING IT ALL TOGETHER: PREVENTING THE NIGHTMARE THROUGH UNDERSTANDING



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# BASIC STEPS IN A LAWSUIT

1. Pleadings
2. Discovery
3. Trial
4. Appeal
5. Settlement

## SCOPE OF PRACTICE AND STANDARD OF CARE (DEFINED BY CASE LAW)

APRN Scope of practice: defined by state laws;

Negligence, in general, is legally defined as “the standard of conduct to which one must conform... [and] is that of a reasonable man under like circumstances.”

Elements:

- duty;
- breach of duty (standard of care);
- harm;
- causation.

# MEDICAL MALPRACTICE

- *“Medical malpractice is a legal fault by a physician or surgeon [APRN]. It arises from the failure of a physician [APRN] to provide the quality of care required by law. When a physician [APRN] undertakes to treat a patient, he [she] takes on an obligation enforceable at law to use minimally sound medical judgment and render minimally competent care in the course of services he provides. A physician [APRN] does not guarantee recovery... A competent physician [APRN] is not liable per se for a mere error of judgment, mistaken diagnosis or the occurrence of an undesirable result.”*

*Hall v. Hilburn*, 466 So. 2d 856 (Miss. 1985).

- Medical Malpractice is defined by state statutes.

# CLINICAL PRACTICE GUIDELINES (CPG)

- No set standard on how CPGs are used in court;
- Courts may use liberally or apply stricter scrutiny in a case;
- Must have scientific validity;
- Used to enhance expert testimony, to impeach an expert witness, defend an APRN on use of standard of care or deviance from standard of care;
- “Committees who develop these guidelines should allow flexibility, include multiple sources of scientific merit, and not be dependent on the opinion of a relatively small panel. In addition, if clear evidence is sparse, this should be openly acknowledged in the formation of the guideline”. (Moffett & Moore, 2011).





# THE ADVANCED PRACTICE NURSE AS EXPERT WITNESS

- Will provide an independent and defensible opinion on a specific medical-legal issue in court. (assisted by lawyer);
- **IS THE EXPERT QUALIFIED?**
- Credentialed (doctoral degree preferred);
- Board certified in area at issue;
- Actively practicing;
- Is the expert witness a “career” expert?

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# HOW CAN THE DNPS PUT THEIR BEST FOOT FORWARD ?

- Familiarize yourself with the Strategic Business Plan (vision, mission, objective, strategies, implementation plan, and communication plan);
- Understand APRN SOP laws in your state;
- The Joint Commission protocol for accreditation;
- Incident Reporting;
- Root Cause Analysis (RCA), Benchmarking and Best Practices;
- Concepts of quality (assessment, indicators, measure, assurance and improvement);
- Concepts of safety (culture and practices);
- Legal concepts impacting quality of healthcare.

# HOW CAN THE DNPS PUT THEIR BEST FOOT FORWARD ?

- Familiarity with and adherence to Compliance Program (review and revise at least on an annual basis);
- Familiarity with and adherence to in-house (or out-sourced) health standards, policies, regulations, guidelines and procedures;
- Ensure staff education and compliance with laws, policies, regulations, guidelines and processes for risk management;
- Ensure aggressive and clear medical documentation and billing records;
- Maintain proper insurance coverage (malpractice, general liability, worker's compensation, auto, property including directors and officers, criminal activity [theft or fraud] or fiduciary duty [board directors owe a duty of care, the duty of loyalty and the duty of obedience, as mandated by state and common law]);
- Keep aware of current changes that impact health care systems.

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# FINAL THOUGHTS

- Create a culture of quality in your practice;
- Foster quality by being an authentic leader;
- Embrace quality change;
- Seek ways to enhance quality;
- Create collaborative professional relationships as a means to promote quality of practice;
- Always put quality first.



KEEP  
CALM  
AND  
ASK YOUR  
Questions

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# THANK YOU!

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# REFERENCES

- American Nurses Association (2015). *The Code of Ethics for Nurses with Interpretive Statements (The Code)*. Retrieved from <https://www.nursingworld.org/practice-policy/nursing-excellence/ethics/code-of-ethics-for-nurses/>
- Black HC, et al. *Black's Law Dictionary*. 6<sup>th</sup> ed. St. Paul, MN: West; 1990.
- Crane, T.S., Kingsbury, S., Lovitch, K., & Roll, C., American Bar Association. *What is the Anti-Kick Back Statute?* Retrieved June 30, 2021, from [https://www.americanbar.org/groups/young\\_lawyers/publications/tyl/topics/health-law/what-is-anti-kickback-statute/](https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/health-law/what-is-anti-kickback-statute/)
- Franco, L. S. & Askov, K (2002). [image]. Sustaining quality of healthcare: institutionalization of quality assurance. Retrieved July 9, 2021. Retrieved from <https://www.semanticscholar.org/paper/Sustaining-quality-of-healthcare%3A-of-quality-Franco-Dr/e68af0ddb52b4e2e239b401ec2aaa2c7c02f1442>
- Frisen, M., Farquhar, M., & R., Hughes. (2005). *The nurse's role in promoting a culture of patient safety* (p. 905). Silver Spring, MD: Center for American Nurses
- Fuller, V. J., Kramlich, D., & Palmer, D. (2013). Evidence-Based Practice: The Scholarship Behind the Practice. In A.S.W. Ahmed, L.C. Andrist, S.M. Davis & V. J. Fuller (Eds.) *DNP Education, Practice and Policy*. (pp. 150-151). New York, NY: Springer.



# REFERENCES

- Hall v. Hilburn, 466 So. 2d 856 (Miss. 1985).
- *Institute of Medicine (2006). Performance measurement: Accelerating improvement-Pathways to quality health care (p. 171).*
- *Ministry 121 (2021) [image]. Retrieved June 20, 2021, Retrieved from <https://ministry127.com/christian-living/an-upside-down-world>*
- Moffett, P. & G. Moore. (2011). The Standard of Care: Legal History and Definitions: the Bad and Good News. *W. Journal of Emergency Medicine*, 12(1), 109–112. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3088386/>
- National Center for Biotechnology Information, U.S. National Library of Medicine. (2021). *Quality assurance, healthcare*. Retrieved June 21, 2021, from <https://www.ncbi.nlm.nih.gov/mesh/68011785>
- National Nurses United. Whistle blower protection laws for healthcare workers. Retrieved June 30, 2021, from <https://www.nationalnursesunited.org/whistleblower-protection-laws-for-healthcare-workers>

# REFERENCES

- Restatement of Torts, Second. Section 283.
- Scales of Justice. [image] Retrieved July, 8, 2021. Retrieved from <https://www.bing.com/images/search?view=detailV2&ccid=6yfrW7jP&id=37CE3F18E97ED3BEE62193579A8312F5D90ED743&thid=OIP.6yfrW7jPKc04130chIGSVwHaEK&mediurl=https%3a%2f%2fwallpaperaccess.com%2ffull%2f673286.jpg&cdnurl=https%3a%2f%2fth.bing.com%2fth%2fid%2fR.eb27eb5bb8cf29cd38977d1c84819257%3frik%3dQ9cO2fUSg5pXkw%26pid%3dlmgRaw&exph=1080&expw=1920&q=Scales+of+Justice+Wallpaper&simid=607993238372691764&ck=116A787AA236A0E08C7ED74A9416605A&selectedIndex=1&FORM=IRPRST&ajaxhist=0&ajaxserp=0>
- Staskon, F.C., Kopera, A., & Wilson, R.C. (2007). Taking the IOM quality challenge: Providers can do a lot to meet the Institute of Medicine's call for improving the quality of healthcare (Institute of Medicine's quality control measures to improve the performance of healthcare services). *Behavioral healthcare*, 24, 27-35.
- Teitalbaum, J.C., & Wilenski, S.E. (2013). *Essentials of health policy and law*. Burlington, MA: Jones & Bartlett.
- University of Rochester Medical Center. (2021). *Quality, Safety and Service*. Rochester, NY. Retrieved June, 21, 2021, from <https://www.urmc.Rochester.edu/quality/glossary.aspx>
- U.S. Department of Justice Office of the Inspector General. (2021). *Whistleblower rights and protections*. Retrieved June 20, 2021, from <https://oig.justice.gov/hotline/whistleblower-protection>
- West, L. (2021). Silence of the scams. *American Bar Association*, 3(3), 17-20