



Canadian Nurses
Protective Society

infoLAW[®]

Community & Public Health Nursing and the Law

What legal processes could involve a community/public health nurse?

The community/public health nurse may be a witness or a defendant in legal proceedings. Common legal proceedings are civil lawsuits, criminal prosecutions, professional discipline hearings, inquests, and labour arbitrations. Less common are public inquiries and human rights tribunals.¹

What are the common legal issues a community/public health nurse may face?

a) Consent

Patients in the community must provide valid informed consent to treatment in order for you to provide care.² If a patient lacks the capacity to consent, you must be familiar with the legislation pertaining to consent and substitute decision-making in your jurisdiction, as well as your employer's policies and procedures.

Treating a patient who has not given consent is battery, for which a court can award damages even if the patient did not suffer harm. In a recent lawsuit, a community health nurse was found to have committed battery by immunizing a child without parental consent. The consent form was not completed but the nurse mistakenly thought she had obtained verbal parental consent over the telephone. The nurse relied on the verbal consent when the 11-year-old child said her parent did not want her immunized. At trial, the judge cautioned that the child's assertion should not have been disregarded because consent to treatment can be revoked. "Inconvenient though it may have been,"³ the nurse should have confirmed parental consent before giving the injection.

b) Confidentiality

All health care professionals owe their patients a duty of confidentiality but there are some legal exceptions.⁴ For example, legislation may require you to report suspected child abuse and some communicable diseases. You may disclose information pursuant to a court order or during a legal proceeding. Otherwise, a patient must consent to disclosure of health information to a person outside the health care team. Examples of how the exceptions may affect your practice include:

- a school nurse who has reason to believe that a child is being abused reports to the local child welfare agency;
- a public health nurse at a family planning clinic knows and follows the process for communicating reportable diseases to the public health authorities;
- a community health nurse discloses otherwise confidential patient information in sworn testimony during a criminal trial; and
- at the request of the patient, a nurse on a home visit discusses the patient's condition in the presence of the patient's friend.

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**More than
liability
protection**

c) Documentation

Community/public health nurses face particular documentation challenges. As you often work alone, your documentation is crucial as evidence. Confidentiality and security of records must be maintained, whether on paper or on a computer. If you work with inpatients (e.g. doing a well-baby assessment of a newborn in hospital), you must ensure that your findings are communicated in writing to the other members of the health care team to facilitate continuity of care.⁵

Am I legally responsible for the actions of other health care providers working with me?

When you practice in the community with other health care workers, either you or your employer may delegate work to them.⁶ You are responsible for knowing the work approved for delegation by your employer and the circumstances under which work may be delegated. You are also responsible for making an appropriate decision to delegate and for adequately supervising other health care workers.

In a recent lawsuit,⁷ a disabled patient was receiving medications from community health nurses through her G and J tubes. The patient also had a central venous line [CVL] for total parenteral nutrition. The employer changed the patient assignment from an RN, delegating the patient's care to a registered practical nurse [RPN] who had never given medications. The RPN was found negligent for administering medications into the CVL instead of into the G or J tubes. The RPN's employer was also found negligent for assigning a patient with a CVL to an RPN and for failing to ensure that the RPN knew the patient had a CVL. The RN's were not found negligent even though the two references made by RNs to the CVL in the patient's chart, "were somewhat buried and inadequate at best."⁸

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1. For information on civil liability, professional discipline, criminal prosecutions and grievances, please refer to the *infoLAWs* on Negligence (Vol. 3, No. 1, September 1994), Malpractice Lawsuits (Vol. 7, No. 2, September 1998), and Legal Risks in Nursing (Vol. 8, No. 1, November 1999).
 2. *infoLAW*, Consent to treatment: the role of the nurse (Vol. 3, No. 2, December 1994).
 3. Toews (Guardian ad litem of) v. Weisner, [2001] B.C.J. No. 30 (S.C.) at paragraph 24.
 4. *infoLAW*, Confidentiality of Health Information: your client's right (Vol. 1, No. 2, September 1993) and the Canadian Nurses Association Code of Ethics (1997).
 5. A Jury Recommendation from the *Verdict of the Inquest into the Death of Clare Azzopardi*, Feb. 10-14, 1997 (Ontario) is that public health nurses be permitted and encouraged to document on the hospital chart if doing a well-baby check-up in hospital. Please note that coroner's jury recommendations do not have the force of law.
 6. *infoLAW*, Delegation to Other Health Care Workers (Vol. 9, No. 2, December 2000).
 7. *Till v. Walker*, [2000] O.J. No. 84 (Ont. S.C.J.).
 8. *Ibid.* at para. 21.

N.B. In this document, the feminine pronoun includes the masculine and vice versa.

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