

## **Unit 1: Foundations of Mental Health and the Legal and Ethical issues**

### **First lec 1—part2**

Mental Health and Mental Illness

#### **• Legal and Ethical issues of Mental Health**

**HISTORICALLY** Complex situations frequently arise in caring for individuals with mental illness, and nurses are held to the highest level of legal and ethical accountability in their professional practice. The American Nurses' Association (ANA) (2001) has established a code of ethics for nurses to use as a framework within which to make ethical choices and decisions

### **LEGAL CONSIDERATIONS**

#### **• Rights of Clients and Related Issues**

Clients receiving mental health care retain all civil rights afforded to all people except the right to leave the hospital in the case of involuntary commitment. They have the right to refuse treatment, to send and to receive sealed mail, and to have or refuse visitors. These decisions can be made by a court or a designated decision-making person or persons, for example

**-A suicidal client** may not be permitted to keep a belt, shoelaces, or scissors because he or she may use these items for self-harm.

**-A client** who becomes aggressive after having a particular visitor may have that person restricted from visiting for a period of time.

**-A client making threatening** phone calls to others outside the hospital may be permitted only supervised phone calls until his or her condition improves.

### **1- Involuntary Hospitalization**

Most clients are admitted to inpatient settings on a voluntary basis, which means they are willing to seek treatment and agree to be hospitalized. Some clients, however, do not wish to be hospitalized and treated. Health-care professionals respect these wishes unless clients are a danger to themselves or others (i.e., they

are threatening or have attempted suicide or represent a danger to others). Clients hospitalized against their will are committed to a facility for psychiatric care until they no longer pose a danger to themselves or to anyone else.

## **2- Release from the Hospital**

Clients admitted to the hospital voluntarily have the right to leave, provided they do not represent a danger to themselves or others. They can sign a written request for discharge and can be released from the hospital against medical advice. If a voluntary client who is dangerous to himself or herself or to others signs a request for discharge, the psychiatrist may file for a civil commitment to detain the client against his or her will until a hearing can take place to decide the matter.

## **3-Mandatory Outpatient Treatment**

Legally mandated or assisted outpatient treatment is the requirement that clients continue to participate in treatment on an involuntary basis after their release from the hospital into the community. This may involve taking prescribed medication, keeping appointments with health-care providers for follow-up, and attending specific treatment programs or groups. Benefits of mandated treatment include :

- 1- shorter inpatient hospital stays.
- 2- reduced mortality risk for clients considered dangerous to self or others.
- 3-protection of clients from criminal victimization by others.
- 4-is more cost-effective than repeated involuntary hospital stays.

## **4- Guardianship**

People who are gravely disabled; are found to be incompetent; cannot provide food, clothing, and shelter for themselves even when resources exist. In these cases, the court appoints a person to act as a legal guardian who assumes many responsibilities for the person, such as giving informed consent, writing checks, and entering contracts. The client with a guardian loses the right to enter into legal contracts or agreements that require a signature (e.g., marriage or mortgage).

## **5- Least Restrictive Environment**

Clients have the right to treatment in the least restrictive environment appropriate to meet their needs. It means that a client does not have to be hospitalized if he or she can be treated in an outpatient setting or in a group home. It also means that the client must be free of restraint or seclusion unless it is necessary.

**-Restraint** :is the direct application of physical force to a person, without his or her permission, to restrict his or her freedom of movement. The physical force may be human or mechanical or both. Human restraint occurs when staff members physically control the client and move him or her to a seclusion room. Mechanical restraints are devices, usually ankle and wrist restraints, fastened to the bed frame to curtail the client's physical aggression, such as hitting, kicking, and hair pulling.

**-Seclusion:** is the involuntary confinement of a person in a specially constructed, locked room equipped with a security window or camera for direct visual monitoring. For safety, the room often has a bed bolted to the floor and a mattress. Any sharp or potentially dangerous objects, such as pens, glasses, belts, and matches, are removed from the client as a safety precaution. Seclusion decreases stimulation, protects others from the client, prevents property destruction, and provides privacy for the client. The goal is to give the client chance to regain physical and emotional self-control.

## **6-Confidentiality**

The protection and privacy of personal health information is regulated by the federal government through the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Protected health information is any individually identifiable health information in oral, written, or electronic form. Mental health and substance abuse records have additional special protection under the privacy rules.

## **7- Duty to Warn Third Parties**

One exception to the client's right to confidentiality is the duty to warn. As a result of this decision, mental health clinicians may have a duty to warn identifiable third parties of threats made by clients, even if these threats were discussed during therapy sessions otherwise protected by privilege.

### **8- Insanity Defense**

The argument that a person accused of a crime is not guilty because that person cannot control his or her actions or cannot understand the wrongfulness of the act. When the person meets the criteria, he or she may be found not guilty by reason of insanity.

### **9- Nursing Liability**

Nurses are responsible for providing safe, competent, legal, and ethical care to clients and families. Nurses are expected to meet standards of care, meaning the care they provide to clients meets set expectations and is what any nurse in a similar situation would do. Standards of care are developed from professional standards, state nurse practice acts, federal agency regulations, agency policies and procedures, job descriptions, and civil and criminal laws.

### **10- Torts**

A tort is a *wrongful act* that results in injury, loss, or damage. Torts may be either unintentional or intentional.

**Unintentional Torts:** Negligence and Malpractice. Negligence is an unintentional tort that involves causing harm by failing to do what a reasonable and prudent person would do in similar circumstances. Malpractice is a type of negligence that refers specifically to professionals such as nurses and physicians. Not all injury or harm to a client can be prevented, nor do all client injuries result from malpractice.

## **ETHICAL ISSUES**

*Ethics* is a branch of philosophy that deals with values of human conduct related to the rightness or wrongness of actions and to the goodness and badness of the motives and ends of such actions. Ethical theories are sets of principles used to decide what is morally right or wrong.

Principles used as guides for decision making include **autonomy, beneficence, non maleficence, justice, veracity, and fidelity**.

**1-Autonomy** refers to the person's right to self-determination and independence.

**2-Beneficence** refers to one's duty to benefit or to promote the good of others.

**3-Nonmaleficence** is the requirement to do no harm to others either intentionally or unintentionally

**4-Justice** refers to fairness; that is, treating all people fairly and equally without regard for social or economic status, race, sex, marital status, religion, ethnicity, or cultural beliefs.

**5-Veracity** is the duty to be honest or truthful.

**6-Fidelity** refers to the obligation to honor commitments and contracts.

### **Ethical Dilemmas in Mental Health**

An ethical dilemma is a situation in which ethical principles conflict or when there is no one clear course of action in a given situation. For example, the client who refuses medication or treatment is allowed to do so on the basis of the principle of autonomy. If the client presents an imminent threat of danger to self or others, however, the principle of non-maleficence (do no harm) is at risk. To protect the client or others from harm, the client may be involuntarily committed to a hospital, even though some may argue that this action violates his or her right to autonomy.

Ethical dilemmas are often complicated and charged with emotion, making it difficult to arrive at fair or “right” decisions.

### **Points to Consider When Confronting Ethical Dilemmas**

- Talk to colleagues or seek professional supervision. Usually, the nurse does not need to resolve an ethical dilemma alone.
- Spend time thinking about ethical issues, and determine what your values and beliefs are regarding situations before they occur.
- Be willing to discuss ethical concerns with colleagues or managers. Being silent is condoning the behavior.

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