



PARENTS, GUARDIANS
AND LEGAL ASPECTS
OF NURSING AND
MEDICAL ISSUES

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DISCLAIMER

All information in presentation is informational only and is not legal advice. Should you have any questions or a situation requiring advice, please contact an Attorney.



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OVERVIEW OF AUTHORITY OF L.A.R.'S

What is an LAR

- Persons with Intellectual Disabilities Act:

Guardian: “means the person who, under court order, is the guardian of the person of another or of the estate of another.”

- Regulations

LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

Persons with Intellectual Disability Act

- To be advised of Rights.
- To report abuses to Consumer Rights
- Medication
- Not to be mistreated, neglected or abused
- To withdraw individual from program.
- Right to Access record

Rights

Planning and the Parents or LAR

- Right to participate in planning treatment and habilitation.
- Right to be informed in writing at reasonable intervals.
- Given the right to choose among several appropriate alternative services from a service provider, if possible..
- This includes participation in development and reviews of individualized habilitation plans.

Rights

Regulations

- Authority to make certain decisions on behalf of individual.
- Participate in participation of development and review of individualized treatment plan and to receive in writing.
- Choose from several appropriate services, if possible.
- To withdraw individual.
- Regarding medication.
- Initiate complaint.
- Written notice of rights.
- Access to information contained in record.

Rights

Certification Principles: HCS

- Including LAR in decisions like:
- Notice of illness and accident and emergencies:
- Relocation
- Privacy (lock on Individual's doors)

POTENTIAL
AREAS OF
CONFLICT

Video cameras

Transportation

Medical/Nursing Issues



VIDEO CAMERAS

- Risks
- Mitigation of Risks
 - House Rules--HUD

Issues

Mitigation of Risks

- Policies
- Communications

TRANSPORTATION

Overview of standards and regulations

Risks

Mitigation of Risks

MEDICAL/NURSING ISSUES

Authority of Physician

Nurse

Delegation

PHYSICIAN TO UNLICENSED PERSON

- ***A physician may delegate to a qualified and properly trained person acting under the physician's supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician the act:***
 - ***can be properly and safely performed by the person to whom the medical act is delegated;***
 - ***is performed in its customary manner;***
and
 - ***is not in violation of any other statute***

BUT...

***The delegating physician
remains responsible for the
medical acts of the person
performing the delegated
medical acts.***

AND...

If the physician orders, however, are beyond the level of training and scope of the unlicensed provider, and the physician will not be directly monitoring the implementation of such nursing tasks, a Registered Nurse must review the orders, implement care, provide ongoing monitoring of such care, and be able to consult with physician regarding care prescribed.



DUTIES—NURSE PRACTICE ACT

- *Know and conform to the Texas Nursing Practice Act*
- *Implement measures to promote a safe environment*
- *Know the rationale for and the effects of medications and treatment*
- *Accurately and completely report and document*
 - *physician, dentist or podiatrist orders*
 - *contacts with other health care team members concerning significant events regarding client's status*
- *Clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-efficacious or contraindicated by consulting with the appropriate licensed practitioner*

CERTIFICATION PRINCIPLES

- ***Ensure that nursing is provided in accordance with the individual's PDP; IPC; implementation plan; Texas Occupations Code, Chapter 301 (Nursing Practice Act)***
 - ***monitoring health risks, data, and information***
 - ***performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law***

Court Ruling

*In Lunsford v. Board of Nurse Examiners, 648 S.W. 2d 391 (Tex. App.--Austin, 1983), the court in affirming the disciplinary action of the Board, held that **a nurse has a duty to the patient which cannot be superseded by hospital policy or physician's order.***

NURSES MUST SHOW BOARD OF NURSING—(BON SANCTION POLICIES)



- *Each nurse must be able to support how his/her clinical judgments and nursing actions are aligned with the NPA [Nurse Practice Act] and Board Rules...*
- *The nurse, by virtue of a rigorous process of education and examination leading to either LVN or RN licensure, is accountable to the Board to assure that nursing care meets standards of safety and effectiveness.*
- *Therefore, it is the position of the Board that each licensed nurse upholds his/her duty to maintain client safety by practicing within the parameters of the NPA and Board Rules as they apply to each licensee.*



APPLICATION

- Regulations
- Implementation of orders
- Communications with Physicians



Regulations & Service Delivery

- ***Ensure that nursing is provided in accordance with the individual's PDP; IPC; implementation plan; Texas Occupations Code, Chapter 301 (Nursing Practice Act);... and consists of performing health care activities and monitoring the individual's health conditions, including: ...***
 - ***monitoring health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified from a nursing assessment;...***
 - ***performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by an RN or LVN;..."***

CONTINUED...

- ***delegating nursing tasks to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;***
- ***teaching an unlicensed service provider about the specific health needs of an individual;***
- ***performing an assessment of an individual's health condition;***
- ***an RN doing the following:***
 - ***performing a nursing assessment for each individual:***



Thus...If Physician writes orders outside scope and training of unlicensed provider...RN must

- Perform an assessment of an individual's health condition
- Perform health care procedures ordered and prescribed by a physician or medical practitioner
- Monitor health risks, data and information related to these prescribed services
- Teach an unlicensed provider about specific health needs of an individual
- Determine if nursing tasks can be delegated to an unlicensed service provider, and if yes, supervise the performance of these tasks after providing sufficient training
- Monitor and supervise delegated nursing tasks by unlicensed provider to ensure that these tasks are being performed as per training and physician orders

CONCLUSION

Thus, a Registered Nurse must not simply receive and implement medical orders from a prescribing practitioner. All orders must first be reviewed and found to be in accordance with current acceptable standards of professional practice or law. Secondly, they must not be inaccurate, non-efficacious, or contraindicated based on the nurse's current clinical assessment of the patient/client. Finally, if any question exists to the validity of any prescribed order or treatment, it is the Registered Nurse's duty to consult with that ordering practitioner for clarification while still performing any necessary measures to ensure the safety and well-being of the client.

INSTEAD...

All orders must first be reviewed and found to be in accordance with current acceptable standards of professional practice or law.

All orders must **not** be inaccurate, non-efficacious, or contraindicated based on the nurse's current clinical assessment of the patient/client.

If any question exists to the validity of any prescribed order or treatment, it is the Registered Nurse's duty to consult with that ordering practitioner for clarification while still performing any necessary measures to ensure the safety and well-being of the client.

All delegated nursing tasks must be monitored by the Registered Nurse to ensure that the unlicensed provider has sufficient training to perform such tasks; otherwise, the tasks must not be delegated and ongoing nursing assessment and evaluation must be performed by the Registered Nurse.

Licensure

Compliance

Civil Litigation

Risks

MITIGATION OF RISKS

Rules

Policies

Clarity about nursing services and consent



ENDING THE
RELATIONSHIP?

REFUSAL OF GUARDIAN...

*If an individual or LAR refuses a nursing assessment described in subsection (a)(31)(J)(i) of this section, **the program provider must not:***

Provide nursing services to the individual; or

Provide host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, day habilitation, or CFC PAS/HAB to the individual unless:

an unlicensed service provider does not perform nursing tasks in the provision of the service; and

the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (d) of this section, the program provider must:

- *immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and*
- *include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.*

MUST...

If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.190(e)(21)(A) of this subchapter, the program provider must immediately send the written notification described in subsection (e) of this section to DADS.

The program provider must provide Transition Assistance Services in accordance with this subsection.

AND...

MISCELLANEOUS ISSUES

