ETHICS AND JURISPRUDENCEx FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

COURSE OBJECTIVE: The purpose of this course is to prepare physical therapists and physical therapist assistants to incorporate professional association standard-based ethical principles and behaviors into their practice.

LEARNING OBJECTIVES
Upon completion of this course, you will be able to:

• Define ethics.
• Differentiate between descriptive, normative, teleological, and deontological ethical theories.
• Summarize the fundamental ethical principles generally associated with the practice of healthcare as a whole.
• Distinguish between how ethics and values operate in the healthcare setting.
• Discuss the American Physical Therapy Association’s “Code of Ethics and Guide for Professional Conduct of Physical Therapists.”
• Discuss the American Physical Therapy Association’s “Guide for Conduct of Physical Therapist Assistants” and “Standards of Ethical Conduct for the Physical Therapist Assistant.”
• Describe the basis and sources of law in the United States.
• Identify how civil and criminal law apply to the practice of physical therapy.

Why are ethics so important to consider, both in the practice of healthcare in general and physical therapy in particular? As physical therapists and physical therapist assistants assume a more autonomous role in healthcare, ethical judgments play an important role in the scope of
sound clinical decision-making. In addition to potential legal consequences, unethical behavior risks loss of trust among the public, both for individual physical therapists and/or physical therapist assistants as well as for the profession as a whole (FSBPT, 2014a).

WHAT ARE ETHICS?

Ethics are broadly defined as the division of philosophy that deals specifically with questions concerning the nature of values in regards to matters of human conduct. In considering ethical judgments and decisions, this branch of philosophy is primarily concerned with the ability to:

• Clarify the nature of such judgments in general
• Provide criteria for determining what is ethically right or wrong
• Investigate the grounds for holding these judgments to be correct
  (Loyola University New Orleans, 2014)

Ethical Theories

In order to clarify why what is considered to be “right” or “good” actually is right or good, philosophers engaged with questions of ethics have generally sought to formulate and justify ethical theories. These theories are intended to explain the fundamental nature of that which is “good,” why it is “good,” and why the ethical principles most commonly used to evaluate human conduct follow (or do not follow) from these theories. Ethical theories may be presented for different purposes, as described below:

• **Descriptive ethical theories** seek to describe what people consider to be “good” or “right.” Such theories may be considered true or false depending on whether they do indeed describe correctly what people consider to be good or right.

• **Normative ethical theories** are intended to justify judgments concerning what people should do or not do. Normative theories are primarily concerned not with what is the case but with what should be the case in an ideal situation.

• **Teleological ethical theory**, also called consequentialist theory, claims that it is the consequence, or end result, of an action that determines whether the action is right or wrong.

• **Deontological ethical theory** argues that it is the motivation, as opposed to the consequences of an action, that determines whether the action is right or wrong.
  (Loyola University New Orleans, 2014)

Ethical Principles and Healthcare

There are four fundamental ethical principles generally accepted and applied to the practice of healthcare as a whole.
• **Autonomy** refers to the ability of an individual to think, decide, and act upon one’s own initiative. It is the responsibility of healthcare providers to provide sufficient and accurate information to a patient to allow the patient to make informed decisions and to honor a patient’s decisions regarding their own healthcare even when a patient’s decision may diverge from what the healthcare team would choose.

• **Beneficence** means working actively for the best interests of the patient. This principle highlights the general concept of doing good for others and, in the context of a provider-patient relationship, entrusts a healthcare provider with performing professional and clinical duties in a competent, caring manner that will benefit the patient.

• **Nonmaleficence** means to do no harm to a patient. This may mean carefully weighing potential benefits against potential negative results and/or side effects that may potentially result from providing healthcare interventions.

• **Justice** refers to a healthcare provider’s ethical responsibility to, insofar as possible, provide equal and impartial treatment to all patients in similar situations, regardless of a patient’s age, disability status, socioeconomic status, race, religion, gender identification, sexual orientation, or other background factors.

(University of Ottawa, 2014)

While explicit ethical principles specific to the practice of physical therapy are detailed below, the preceding four fundamental ethical principles are applicable and implicit in the components of the APTA’s Code of Ethics for the Physical Therapist (discussed later in this course).

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**PATIENT SELF-DETERMINATION ACT**

The responsibility held by healthcare providers to ensure and respect a patient’s right to autonomy is also legally enforced by the federal Patient Self-Determination Act (PSDA) of 1991. The PSDA mandates that any Medicare- and/or Medicaid-certified healthcare institution must actively work to educate adult patients and the community as a whole about the rights of a patient to accept or refuse healthcare interventions. The PSDA obligates healthcare providers to ensure that patients are informed of their legal rights, under individual state law, to make decisions about their own healthcare, as well as to create an advance directive for themselves.

This law mandates that patients admitted to healthcare facilities be asked whether they have an advance directive in place; that healthcare facilities maintain policies and procedures regarding advance directives; and that this information be provided to patients when they are admitted. (The PSDA defines an advance directive as a “written instrument, such as a living will or durable power of attorney for healthcare, recognized under state law, relating to the provision of such care when the individual is incapacitated.”) Advance directive laws were put into place in response to several highly visible legal cases in order to protect the right of a patient to predetermine whether or not to receive life-sustaining healthcare interventions.

Bioethics

Bioethics explores those ethical questions specific to the life sciences. Bioethical analysis assists people in making decisions about their behavior and about policy questions that governments, organizations, and communities must face when they consider how best to use new biomedical knowledge and innovations.

The primary difference between scientific and bioethical inquiry is that scientists seek to understand concrete phenomena in the world (what is), while bioethicists strive to determine what people should do. For example, a scientist might ask, “How might we genetically modify a mouse to produce human antibodies for use in cancer treatment?” A bioethicist, in contrast, would be more likely to ask, “Should we genetically modify a mouse to produce human antibodies at all?” (NIH, 2014).

Ethics Versus Values

While the terms ethics and values are often used interchangeably, they are actually quite different in meaning. Ethics constitutes a broadly accepted collection of moral principles; values are much more individualized and relate to an individual’s personal set of standards regarding what is right, important, and valuable (Townsville Community Legal Services, 2014).

VALUES CLARIFICATION

Originally proposed by Raths (1979) and still widely used in classroom and clinical settings, values clarification is a seven-step process that seeks to allow individuals to examine their lives and clearly articulate their values. The process follows the subsequent stepwise progression:

Choosing
1. Identify and select alternatives.
2. Choose freely from alternatives.
3. Consider the consequences of each choice.

Prizing
4. Be proud of and happy in your choice.
5. Affirm your choice publicly.

Acting
6. Make the choice a part of your behavior.
7. Act with a pattern of consistency and repetition.

Source: Modified from Raths et al., 1979.
Ethical Dilemmas

An ethical dilemma arises when a practitioner becomes caught between two conflicting duties that mutually exclude one another but that would each be ethically viable if considered separately. In order to protect the best interests of the patient and to minimize the risk of ethical and/or legal complaints, it is of utmost importance that practitioners develop the skills and are aware of the resources available for the successful resolution of ethical dilemmas.

Resolution of ethical dilemmas in the clinical setting requires a thoughtful and careful decision-making process and may include any or all of the following steps:

- Identifying ethical issues, including any conflicting values and duties. Relevant codes of ethics, standards, legal principles, agency policies, and one’s personal values must be considered.

- Identifying which individuals, groups, and/or organizations are likely to be affected by the ultimate decision. Who is involved and who has the right and/or the responsibility to make the decisions?

- Identifying possible courses of action, the participation involved in each, and possible benefits and risks of each option. Whom would each choice affect and how? What are the risks and potential benefits of each option?

- Consulting with colleagues and appropriate experts. Many healthcare institutions have formal ethics committees to assist in the resolution of ethical dilemmas, particularly in more complex cases such as those that involve delicate end-of-life issues. Ethics committees generally consist of members from a variety of clinical and non-clinical backgrounds, such as healthcare professionals, bioethicists, clergy, lawyers, and lay persons.

- Making and documenting the decision. A written record of the decision-making process is a crucial component in resolution of an ethical dilemma.

(National Association of Social Workers, Illinois Chapter, 2013)

**CASE**

Tyler works as a physical therapist on the post-operative orthopedic floor of a large urban hospital. When Tyler arrives at the room of Mr. Akhinga, who has had bilateral total knee replacements, to begin his scheduled morning physical therapy session, he finds the patient still in bed in his hospital gown. When Tyler inquires about this at the nurse’s station, he is told that Mr. Akhinga stated that he did not want any P.T. today “because I’m in too much pain.” This is the third time this has happened this week.

Tyler now faces an ethical dilemma. While the ethical principle of autonomy dictates that Mr. Akhinga does indeed have the right to accept or refuse physical therapy interventions, Tyler is concerned that continued missed therapy sessions may lead to a poorer overall functional outcome for Mr. Akhinga in the long term. This would run counter to the ethical principle of beneficence, or acting in a clinical manner that would positively affect a patient’s well being.
Tyler documents the missed visit for the morning and goes immediately to his rehab director to discuss the dilemma. Tyler and the rehab director consult with the nursing staff, a social worker, and Mr. Akhinga’s surgeon, as well as with Mr. Akhinga and his wife. It is eventually discovered that Mr. Akhinga’s post-operative pain has not been sufficiently managed by his currently prescribed medication, but that he has been hesitant to discuss his discomfort with his nurses because, “I didn’t want to bother them, they’re already so busy.” It is decided that Mr. Akhinga’s surgeon will adjust his medication to better manage his pain and that his nursing personnel will verbally ask Mr. Akhinga to rate his pain at regular intervals throughout the day. The rehab director offers to make Mr. Akhinga’s physical therapy schedule available to the nursing staff on the post-op floor several days in advance so that his medication schedule and therapy schedule may be coordinated.

The consultations and agreed-upon course of action are documented in Mr. Ankinga’s medical record and Mr. Akinga seems pleased with the plan of action. Within one day, he is reporting significantly less pain and is once again willing to participate in physical therapy.

**CODES AND STANDARDS OF ETHICAL CONDUCT**

Codes of ethics are formal statements that set forth standards of ethical behavior for members of a specific group. One of the hallmark characteristics of a profession is that its members subscribe to a code of ethics. Every member of a profession is expected to read, understand, and abide by the specific ethical standards of that profession.

In order to assert the values and standards expected of members of the profession of physical therapy, the American Physical Therapy Association (APTA) publishes the *Code of Ethics for the Physical Therapist, Standards of Ethical Conduct for the Physical Therapist Assistant, APTA Guide for Professional Conduct,* and *APTA Guide for Conduct of the Physical Therapist Assistant.* These four documents are regularly revised and updated, with the latest codes and standards effective July 2010 (APTA, 2010a).

Portions of these documents are provided here. *(See also “Resources” at the end of this course.)*

**Code of Ethics for the Physical Therapist**

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**PREAMBLE**

The Code of Ethics for the Physical Therapist delineates the ethical obligations of all physical therapists as determined by the House of Delegates of the American Physical Therapy Association.
The purposes of this Code of Ethics are to:

1. Define the ethical principles that form the foundation of physical therapist practice in patient/client management, consultation, education, research, and administration.

2. Provide standards of behavior and performance that form the basis of professional accountability to the public.

3. Provide guidance for physical therapists facing ethical challenges, regardless of their professional roles and responsibilities.

4. Educate physical therapists, students, and other healthcare professionals, regulators, and the public regarding the core values, ethical principles, and standards that guide the professional conduct of the physical therapist.

5. Establish the standards by which the American Physical Therapy Association can determine if a physical therapist has engaged in unethical conduct.

No code of ethics is exhaustive nor can it address every situation. Physical therapists are encouraged to seek additional advice or consultation in instances where the guidance of the Code of Ethics may not be definitive.

This Code of Ethics is built upon the five roles of the physical therapist (management of patients/clients, consultation, education, research, and administration), the core values of the profession, and the multiple realms of ethical action (individual, organizational, and societal). Physical therapist practice is guided by a set of seven core values: accountability, altruism, compassion/caring, excellence, integrity, professional duty, and social responsibility. Throughout the document the primary core values that support specific principles are indicated in parentheses. Unless a specific role is indicated in the principle, the duties and obligations being delineated pertain to the five roles of the physical therapist.

Fundamental to the Code of Ethics is the special obligation of physical therapists to empower, educate, and enable those with impairments, activity limitations, participation restrictions, and disabilities to facilitate greater independence, health, wellness, and enhanced quality of life.

**ROLES, CORE VALUES, AND REALMS OF ETHICAL ACTION**

The APTA’s Code of Ethics for the Physical Therapist delineates five roles, seven core values, and three realms of ethical action to which physical therapists are expected to adhere.

**Roles** assumed by physical therapists in professional practice include:

1. Management of patients/clients
2. Consultation
3. Education
4. Research
5. Administration
Core values which physical therapists are expected to exemplify include:
1. Accountability
2. Altruism
3. Compassion/caring
4. Excellence
5. Integrity
6. Professional duty
7. Social responsibility

Realms of ethical action for physical therapists include:
1. Individual
2. Organizational
3. Societal

Source: OAC 4723-4-01.

PRINCIPLES

1. Physical therapists shall respect the inherent dignity and rights of all individuals. (Core Values: Compassion, Integrity)
   A. Physical therapists shall act in a respectful manner toward each person regardless of age, gender, race, nationality, religion, ethnicity, social or economic status, sexual orientation, health condition, or disability.
   B. Physical therapists shall recognize their personal biases and shall not discriminate against others in physical therapist practice, consultation, education, research, and administration.

2. Physical therapists shall be trustworthy and compassionate in addressing the rights and need of patients/clients. (Core Values: Altruism, Compassion, Professional Duty)
   A. Physical therapists shall adhere to the core values of the profession and shall act in the best interests of patients/clients over the interests of the physical therapist.
   B. Physical therapists shall provide physical therapy services with compassionate and caring behaviors that incorporate the individual and cultural difference of patients/clients.
   C. Physical therapists shall provide the information necessary to allow patients or their surrogates to make informed decisions about physical therapy care or participation in clinical research.
   D. Physical therapists shall collaborate with patients/clients to empower them in decisions about their healthcare.
E. Physical therapists shall protect confidential patient/client information and may disclose confidential information to appropriate authorities only when allowed or as required by law.

3. Physical therapists shall be accountable for making sound professional judgments. (Core Values: Excellence, Integrity)
   A. Physical therapists shall demonstrate independent and objective professional judgment in the patient’s/client’s best interest in all practice settings.
   B. Physical therapists shall demonstrate professional judgment informed by professional standards, evidence (including current literature and established best practice), practitioner experience, and patient/client values.
   C. Physical therapists shall make judgments within their scope of practice and level of expertise and shall communicate with, collaborate with, or refer to peers or other healthcare professionals when necessary.
   D. Physical therapists shall not engage in conflicts of interest that interfere with professional judgment.
   E. Physical therapists shall provide appropriate direction of and communication with physical therapist assistants and support personnel.

4. Physical therapists shall demonstrate integrity in their relationships with patients/clients, families, colleagues, students, research participants, and other healthcare providers, employers, payers, and the public. (Core Value: Integrity)
   A. Physical therapists shall provide truthful, accurate, and relevant information and shall not make misleading representations.
   B. Physical therapists shall not exploit persons over whom they have supervisory, evaluative, or other authority (eg. patients/clients, students, supervisees, research participants, or employees).
   C. Physical therapists shall discourage misconduct by healthcare professionals and report illegal or unethical acts to the relevant authority when appropriate.
   D. Physical therapists shall report suspected cases of abuse involving children or vulnerable adults to the appropriate authority, subject to law.
   E. Physical therapists shall not engage in any sexual relationship with any of their patients/clients, supervisees, or students.
   F. Physical therapists shall not harass anyone verbally, physically, emotionally, or sexually.

5. Physical therapists shall fulfill their legal and professional obligations. (Core Values: Professional Duty, Accountability)
   A. Physical therapists shall comply with applicable local, state, and federal laws and regulations.
B. Physical therapists shall have primary responsibility for supervision of physical therapy assistants and support personnel.

C. Physical therapists involved in research shall abide by accepted standards governing protection of research participants.

D. Physical therapists shall encourage colleagues with physical, psychological, or substance related impairments that may adversely impact their professional responsibilities to seek assistance or counsel.

E. Physical therapists who have knowledge that colleagues are unable to perform their professional responsibilities with reasonable skill and safety shall report this information to the appropriate authority.

F. Physical therapists shall provide notice and information about alternatives for obtaining care in the event the physical therapist terminates the provider relationship while the patient/client continues to need physical therapy services.

6. Physical therapists shall enhance their expertise through the lifelong acquisition and refinement of knowledge, skills, abilities, and professional behaviors. *(Core Value: Excellence)*

A. Physical therapists shall achieve and maintain professional competence.

B. Physical therapists shall take responsibility for their professional development based on critical self-assessment and reflection on changes in physical therapist practice, education, healthcare delivery, and technology.

C. Physical therapists shall evaluate the strength of evidence and applicability of content presented during the professional development activities before integrating the content or technique into practice.

D. Physical therapists shall cultivate practice environments that support professional development, life-long learning, and excellence.

7. Physical therapists shall promote organizational behavior and business practices that benefit patients/clients and society. *(Core Values: Integrity, Accountability)*

A. Physical therapists shall promote practice environments that support autonomous and accountable professional judgments.

B. Physical therapists shall seek remuneration as is deserved and reasonable for physical therapy services.

C. Physical therapists shall not accept gifts or other considerations that influence or give an appearance of influencing their professional judgment.

D. Physical therapists shall fully disclose any financial interest they have in products or services that they recommend to patients/clients.

E. Physical therapists shall be aware of charges and shall ensure that documentation and coding for physical therapy services accurately reflect the nature and extent of the services provided.
F. Physical therapists shall refrain from employment arrangements or other arrangements that prevent physical therapists from fulfilling professional obligations to patients/clients.

8. Physical therapists shall participate in efforts to meet the health needs of people locally, nationally, and globally. (Core Values: Social Responsibility)

A. Physical therapists shall provide pro bono physical therapy services or support organizations that meet the health needs of people who are economically disadvantaged, uninsured, and underinsured.

B. Physical therapists shall advocate to reduce health disparities and healthcare inequities, improve access to healthcare services, and address the health, wellness, and preventive healthcare needs of people.

C. Physical therapists shall be responsible stewards of healthcare resources and shall avoid over-utilization or under-utilization of physical therapy services.

D. Physical therapists shall educate members of the public about the benefits of physical therapy and the unique role of the physical therapist.

CASE

Marisol is a physical therapist in a midsize outpatient facility. She has recently noticed that Alex, a young man recovering from an ACL repair who is on her current caseload, seems to be developing feelings for her that go beyond the usual clinician-patient relationship. He always requests to work with Marisol and frequently compliments her appearance. One morning, Marisol returns from lunch to find a bouquet of flowers on her desk. The card reads, “Thanks to you, I feel ready to go dancing again! Will you have dinner with me on Friday? –Sincerely, Alex.”

While she is attracted to Alex and feels flattered by his attention, Marisol quickly realizes the potential ethical problem inherent in accepting a date with him. Marisol schedules a meeting with the rehab director to discuss the situation and to weigh her options.

Discussion

Is it all right for Marisol to accept a date with a current patient? No. As clearly stated in Principle 4E of the Code of Ethics for the Physical Therapist, “Physical therapists shall not engage in any sexual relationship with any of their patients/clients, supervisees, or students.” If Marisol wishes to pursue a relationship with Alex, the ethical choice would be to explain to Alex that she cannot do so while he is still a patient of the clinic where she is employed. She and Alex may pursue a relationship after he completes rehab and is discharged. Alternatively, if Alex chooses to complete his rehab at a different facility, this would also allow him and Marisol to begin dating without creating a dilemma of a professional nature for Marisol.
CASE

Ibi is completing her final clinical rotation for her DPT program. Her rotation site is located at a small, critical-access hospital in rural Alaska. Ibi is excited about the wide variety of patients and conditions that she has had the opportunity to encounter in this generalist setting. In the second week of her rotation, Ibi’s clinical instructor (CI) informs her that three patients were admitted to the hospital the previous night with frostbite, and it is expected that they will all require wound care, possibly including sharp debridement, over the next several days.

Having grown up and attended school in Florida, Ibi has never encountered frostbite in a clinical setting. While Ibi has learned about wound care in her didactic program and performed various types of wound care under direct supervision from CIs during earlier student rotations, she has never performed sharp debridement. Ibi does not want to disappoint her CI and wants to receive a positive evaluation for this clinical, yet she does not feel confident in her ability to treat these patients on her own. What should Ibi do?

Discussion

Principle 6B of the Code of Ethics of the Physical Therapist clearly states that physical therapists should “take responsibility for their professional development based on critical self-assessment and reflection on changes in physical therapist practice, education, healthcare delivery, and technology.” Likewise, Principle 3C states that physical therapists “shall make judgments within their scope of practice and level of expertise and shall communicate with, collaborate with, or refer to peers or other healthcare professionals when necessary.”

Even though she wants to please her CI, Ibi should not perform procedures that are outside the scope of her experience, especially if she is not confident in her ability to perform them safely. Ibi should discuss her concerns with her supervisor at once, explaining that all of her prior rotations were in warm-weather locations and that she has never had the opportunity to treat frostbite or to practice sharp debridement. Ibi should respectfully request that her CI provide her with guidance and appropriate training in these areas.

CASE

Sanjay is a physical therapist working in extended-care rehab in a skilled nursing facility setting. Recently, there has been a sharply increased focus on department profitability, and the rehab therapists have felt increasing pressure from administration to significantly increase their daily treatment minutes with Medicare patients. Like the other staff therapists, Sanjay has felt a growing level of concern over this recent pressure and wonders if it is in the best interests of the patients.

During a staff meeting, the rehab director announces that she has been informed by administration that all incoming Medicare A patients must be placed in an “ultra-high” RUG (resource utilization group) level regardless of whether the evaluating therapist feels that this maximal level of rehab intensity is safe or appropriate for each patient. Sanjay voices his concerns over the ethics of this new policy and argues that each patient’s rehab intensity level should be determined on an individual basis by the evaluating therapist.
After the meeting is over, the rehab director pulls Sanjay aside. “Look, I know it’s not the best option,” she says, “but my hands are tied here and I can’t afford to lose my job. If a patient can’t tolerate that level of therapy, we can find some modalities to use on them, or else just pad the minutes a little bit. I can count on you to help me out here, can’t I?”

At home that evening, Sanjay explains to his wife, Jhoti, the situation at work. They discuss his dilemma and refer to the Code of Ethics for Physical Therapists to help clarify his best course of action. They realize that what Sanjay is being asked to do—to provide potentially unnecessary treatment to his patients at the same level of intensity despite their individual needs—is in direct violation of principle 3A (“Physical therapists shall demonstrate independent and objective professional judgment in the patient’s/client’s best interest in all practice settings”).

In addition, if Sanjay were to do as instructed by his rehab director and not voice his ethical concerns about this company’s intended policy, he would be in violation of principle 4C (“Physical therapists shall discourage misconduct by healthcare professionals and report illegal or unethical acts to the relevant authority when appropriate”).

Sanjay decides that he cannot continue to work for a facility that asks him to practice in a manner that violates his professional ethics and potentially puts patient welfare at risk. The next day, he meets privately with his rehab director and explains his decision to resign his position and why. He encourages the director to seriously consider the potential ramifications of what the administration is asking her and the entire rehab department to do. At lunchtime, Sanjay announces his decision to leave and, when asked why he is leaving, politely explains that his sense of professional ethics does not allow him to comply with the new facility policy.

Standards of Ethical Conduct for the Physical Therapist Assistant

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PREAMBLE

The Standards of Ethical Conduct for the Physical Therapist Assistant delineate the ethical obligations of all physical therapist assistants as determined by the House of Delegates of the American Physical Therapy Association. The Standards of Ethical Conduct provide a foundation for conduct to which all physical therapist assistants shall adhere. Fundamental to the Standards of Ethical Conduct is the special obligation of physical therapist assistants to enable patients/clients to achieve greater independence, health, and wellness, and enhanced quality of life.

No document that delineates ethical standards can address every situation. Physical therapist assistants are encouraged to seek additional advice or consultation in instances where the guidance of the Standards of Ethical Conduct may not be definitive.
STANDARDS

1. Physical therapist assistants shall respect the inherent dignity and rights of all individuals.
   A. Physical therapist assistants shall act in a respectful manner toward each person regardless of age, gender, race, nationality, religion, ethnicity, social or economic status, sexual orientation, health condition, or disability.
   B. Physical therapist assistants shall recognize their personal biases and shall not discriminate against others in the provision of physical therapy services.

2. Physical therapist assistants shall be trustworthy and compassionate in addressing the rights and needs of patients/clients.
   A. Physical therapist assistants shall act in the best interest of patients/clients over the interests of the physical therapist assistants.
   B. Physical therapist assistants shall provide physical therapy interventions with compassionate and caring behaviors that incorporate the individual and cultural differences of patients/clients.
   C. Physical therapist assistants shall provide patients/clients with information regarding the interventions they provide.
   D. Physical therapist assistants shall protect confidential patient/client information, and in collaboration with the physical therapist, may disclose confidential information to appropriate authorities only when allowed or as required by law.

3. Physical therapist assistants shall make sound decisions in collaboration with the physical therapist and within the boundaries established by laws and regulations.
   A. Physical therapist assistants shall make objective decisions in the patient’s/client’s best interest in all practice settings.
   B. Physical therapist assistants shall be guided by information about best practice regarding physical therapy interventions.
   C. Physical therapist assistants shall make decisions based upon their level of competence and consistent with patient/client values.
   D. Physical therapist assistants shall not engage in conflicts of interest that interfere with making sound decisions.
   E. Physical therapist assistants shall provide physical therapy services under the direction and supervision of a physical therapist and shall communicate with the physical therapist when patient/client status requires modifications to the established plan of care.

4. Physical therapist assistants shall demonstrate integrity in their relationships with patients/clients, families, colleagues, students, and other healthcare providers, employers, payers, and the public.
A. Physical therapist assistants shall provide truthful, accurate, and relevant information and shall not make misleading representations.

B. Physical therapist assistants shall not exploit persons over whom they have supervisory, evaluative, or other authority (e.g., patients/clients, students, supervisees, research participants, or employees).

C. Physical therapist assistants shall discourage misconduct by healthcare professionals and report illegal or unethical acts to the relevant authority when appropriate.

D. Physical therapist assistants shall report suspected cases of abuse involving children or vulnerable adults to the supervising physical therapist and the appropriate authority, subject to law.

E. Physical therapist assistants shall not engage in any sexual relationship with any of their patients/clients, supervisees, or students.

F. Physical therapist assistants shall not harass anyone verbally, physically, emotionally, or sexually.

5. Physical therapist assistants shall fulfill their legal and ethical obligations.

A. Physical therapist assistants shall comply with applicable local, state, and federal laws and regulations.

B. Physical therapist assistants shall support the supervisory role of the physical therapist to ensure quality care and promote patient/client safety.

C. Physical therapist assistants involved in research shall abide by accepted standards governing protection of research participants.

D. Physical therapist assistants shall encourage colleagues with physical, psychological, or substance related impairments that may adversely impact their professional responsibilities to seek assistance or counsel.

E. Physical therapist assistants who have knowledge that a colleague is unable to perform his/her professional responsibilities with reasonable skill and safety shall report this information to the appropriate authority.

6. Physical therapist assistants shall enhance their competence through the life-long acquisition and refinement of knowledge, skills, and abilities.

A. Physical therapist assistants shall achieve and maintain clinical competence.

B. Physical therapist assistants shall engage in life-long learning consistent with changes in their roles and responsibilities and advances in the practice of physical therapy.

C. Physical therapist assistants shall support practice environments that support career development and life-long learning.

7. Physical therapist assistants shall support organizational behaviors and business practices that benefit patients/clients and society.
A. Physical therapist assistants shall promote work environments that support ethical and accountable decision-making.

B. Physical therapist assistants shall not accept gifts or other considerations that influence or give an appearance of influencing their decisions.

C. Physical therapist assistants shall fully disclose any financial interest they have in products or services that they recommend to patients/clients.

D. Physical therapist assistants shall ensure that documentation for their interventions accurately reflect the nature and extent of the services provided.

E. Physical therapist assistants shall refrain from employment arrangements or other arrangements that prevent physical therapist assistants from fulfilling ethical obligations to patients/clients.

8. Physical therapist assistants shall participate in efforts to meet the health needs of people locally, nationally, and globally.

A. Physical therapist assistants shall support organizations that meet the health needs of people who are economically disadvantaged, uninsured, and underinsured.

B. Physical therapist assistants shall advocate for people with impairments, activity limitations, participation restrictions, and disabilities in order to promote their participation in community and society.

C. Physical therapist assistants shall be responsible stewards of healthcare resources by collaborating with physical therapists in order to avoid over-utilization or under-utilization of physical therapy services.

D. Physical therapist assistants shall educate members of the public about the benefits of physical therapy.

CASE

For the past six months, Rowan has had increasing difficulty in trying to avoid his new neighbor. Ever since she learned that Rowan is a licensed physical therapist assistant, the neighbor has constantly pestered him about her many aches and pains in hopes of getting some free treatment. After the neighbor’s fourth unannounced visit to his home, Rowan finally gives in and agrees to look at his neighbor’s sore neck. After all, he has often watched the physical therapists complete cervical spine evaluations and establish treatment plans at the clinic where he works. Rowan examines his neighbor’s cervical range of motion and, finding a limitation in left-sided rotation, he performs some muscle-energy techniques to address this.

Discussion

Has Rowan done anything wrong? Definitely. Rowan has violated two specific standards from the Standards of Ethical Conduct for the Physical Therapy Assistant:

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• Standard 3B: “Physical therapy assistants shall be guided by information about best practice regarding physical therapy interventions.”

• Standard 3E: “Physical therapy assistants shall provide physical therapy services under the direction and supervision of a physical therapist and shall communicate with the physical therapist when patient/client status requires modification to the established plan of care.”

As a physical therapist assistant, Rowan is under no circumstances allowed to perform an evaluation on a patient or to select specific treatment options without direct supervision from and/or in consultation with a physical therapist.

CASE

Vinh is a physical therapist assistant and has just started a new job in a busy manual therapy practice. On her fourth day at work, a client phones in to cancel her mid-morning appointment. The rehab director tells Vinh to document the treatment as if it had taken place. When Vinh questions the ethics of doing so, the rehab director states, “We reserved the time, so it counts as an appointment.” Should Vinh do as the rehab director asks?

Discussion

Absolutely not. To do so would be a clear violation of Standard 7D of the Standards of Ethical Conduct, which states, “Physical therapist assistants shall ensure that documentation for their interventions accurately reflects the nature and extent of the services provided.”

As a new employee, Vinh may feel especially unsure about questioning her rehab director’s instruction. Nevertheless, it is very important that she meets with the rehab director and explains that knowingly recording false information violates what she understands to be professional ethical standards. If the rehab director still insists upon the false documentation, Vinh should consult immediately with her state’s APTA chapter, follow their advice, and possibly seek other employment if necessary.

Guides for Conduct

In order to help physical therapists and physical therapist assistants interpret and apply the Code of Ethics and the Standards of Ethical Conduct, the ethics and judicial committee of the American Physical Therapy Association has published the APTA Guide for Professional Conduct and the APTA Guide for Conduct of the Physical Therapist Assistant. These guides address each portion of the Code and Standards and are intended to provide a framework by which PTs and PTAs may determine the propriety of their conduct and to guide the development of students. (See “Resources” at the end of this course for a link to these documents.)
LEGAL CONCEPTS AND STATUTES

Physical therapists and physical therapist assistants practice within a society governed by state and federal law. For that reason, it is important that physical therapy professionals understand the basis of law (jurisprudence) in the United States, its sources and types, and the relationship of law to ethics in the practice of physical therapy.

Basis, Sources, and Types of Law (Jurisprudence)

Laws flow from ethical principles and are limited to specific situations and codified by detailed language. These rules of conduct are formulated by an authority with power to enforce them. As such, laws change with time and circumstances. In the United States, law is based on the Old English system wherein the monarch held supreme power over the land and its people, acting according to “divine right.” The ruler’s decisions became the law of the land and eventually were known as common law, or case law. These case-by-case decisions set precedent and shaped future laws.

In the United States, the U.S. Constitution is the supreme law of the land, filling the role once held by the monarch. The first ten amendments to the Constitution, called the Bill of Rights, place restrictions on the power of government and establish specific individual freedoms, such as the right to free speech and assembly. When residents of the nation believe they have been denied any of these rights, they can seek redress in the courts (Hamilton, 1996).

SOURCES OF LAW

The U.S. Constitution established three separate branches of government within the federal system—executive, legislative, and judicial—and granted specific powers to the federal government. These are called express powers. Under the Tenth Amendment, all other powers are retained by the states, including licensure of healthcare professionals such as physical therapists and physical therapist assistants. As a result, both the federal government and the state governments create and enforce laws.

In the states, the division of power mirrors that of the federal government:

- The legislative branch makes laws on behalf of the people.
- The judicial branch interprets these laws and adjudicates disputes, fulfilling its purpose to administer justice without partiality.
- The executive branch administers and enforces the laws, using the police power of the state.
### SOURCES OF LAW IN THE UNITED STATES

#### Constitutional Law

<table>
<thead>
<tr>
<th>Source</th>
<th>U.S. Constitution, the supreme law of the nation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Functions</td>
<td>Establishes executive, legislative, judicial branches of government</td>
</tr>
<tr>
<td>Examples</td>
<td>• Grants specific powers to federal and state governments</td>
</tr>
<tr>
<td></td>
<td>• Protects specific freedoms of individuals (substantive rights)</td>
</tr>
<tr>
<td></td>
<td>• Protects due process of individuals (procedural rights)</td>
</tr>
</tbody>
</table>

#### Statutory Law

<table>
<thead>
<tr>
<th>Source</th>
<th>Laws passed by legislative bodies of federal, state, and local governments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Functions</td>
<td>Protects and provides for the general welfare of society</td>
</tr>
<tr>
<td>Examples</td>
<td>Controlled Substances Act of 1970 created a schedule of controlled substances, ranking them according to their potential for abuse from high (I) to low (V).</td>
</tr>
</tbody>
</table>

#### Administrative Law

<table>
<thead>
<tr>
<th>Source</th>
<th>Executive power of federal, state, and local government, delegated by the legislative branch</th>
</tr>
</thead>
<tbody>
<tr>
<td>Functions</td>
<td>Carries out special duties of various agencies</td>
</tr>
<tr>
<td>Examples</td>
<td>• Federal administrative law: National Labor Relations Board makes nationwide rules to regulate collective bargaining in the United States.</td>
</tr>
<tr>
<td></td>
<td>• State administrative law: State boards of physical therapy make statewide rules to regulate the practice of physical therapy in the state.</td>
</tr>
</tbody>
</table>

#### Common (Case) Law

<table>
<thead>
<tr>
<th>Source</th>
<th>Precedent, custom, tradition, court-made</th>
</tr>
</thead>
<tbody>
<tr>
<td>Functions</td>
<td>Avoids duplication and unnecessary expense of litigating issues many times</td>
</tr>
<tr>
<td>Examples</td>
<td>Amendment 14 grants “equal protection of the law,” but because of <em>Plessy v. Ferguson</em>, an 1896 decision of the Supreme Court, several states continued to segregate children by race in public schools. In 1954, the <em>Brown v. Board of Education</em> decision said, “Separation of children in public schools solely on the basis of race deprives children of a minority group equal educational opportunities, even though physical facilities and other tangible factors may be equal.”</td>
</tr>
</tbody>
</table>

Source: Adapted from Hamilton, 1996.

### TYPES OF LAW

There are two major divisions of law: civil and criminal.

The purpose of civil law is to make restitution for injury suffered by one or more individuals. Civil law is further divided into contract law and tort law.
• Contract law is concerned with legally binding agreements between two or more parties.
• Tort law is concerned with civil wrongs other than contracts, such as assault, battery, and professional negligence.

The purpose of **criminal law** is to protect society from actions that directly threaten the order of society. Because some crimes are more serious than others and children are considered less responsible for their acts than adults, there are three categories of criminal offenses:

• Misdemeanor
• Felony
• Juvenile

Criminal law is concerned with harm against society—that is, with action that directly threatens the orderly existence of society. Criminal acts, while causing harm to individuals, are offenses against the state. Thus, in criminal cases the government attorney acts as the prosecutor on behalf of the people. When a guilty verdict is returned, the victim usually does not receive redress (compensation) even though the person who commits the crime is punished in some way, such as being sentenced to jail, fined, or placed on probation. To receive compensation, the victim must bring a civil suit against the accused perpetrator (Hamilton, 1996).

<table>
<thead>
<tr>
<th>TYPES OF LAW</th>
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<tbody>
<tr>
<td><strong>Civil Law</strong></td>
</tr>
<tr>
<td><strong>Function</strong></td>
</tr>
</tbody>
</table>
| **Categories** | • Contract: Legally binding agreement between two or more parties  
• Tort: Any civil wrong other than breach of contract (assault, battery, slander, invasion of privacy, false imprisonment, professional negligence) |
| **Proof** | By a preponderance of the evidence; adjudicated by a judge or jury; a jury decision need not be unanimous |
| **Criminal Law** |
| **Function** | To protect society from actions which directly threaten its orderly existence. Criminal acts, while aimed at individuals, are offenses against the state, thus perpetrators are punished by the state (imprisoned, fined, performance of hours of work); victims usually are not compensated but may initiate civil action against perpetrators to recover monetary damages for injury or loss. |
| **Categories** | • Misdemeanor: Lesser offenses (violations of physical therapy practice act, vehicle code)  
• Felony: Most serious offenses (murder, rape, burglary, grand theft)  
• Juvenile: Crimes committed by minors (age varies with states and crimes) |
| **Proof** | Beyond a reasonable doubt; jury decision must be unanimous |

Source: Adapted from Hamilton, 1996.
Federal Statutory Issues in Physical Therapy Practice

Though healthcare regulation has historically been managed by individual states, the federal government has become increasingly involved in recent years. Of particular relevance to the practice of physical therapy are several specific acts of Congress, including:

- Americans with Disabilities Act of 1990 (and Amendments of 2008)
- Health Insurance Portability and Accountability Act of 1996
- Patient Protection and Affordable Care Act of 2010

*(See also “Resources” at the end of this course.)*

SOCIAL SECURITY ACT AND AMENDMENTS

- **Medicare** is a social insurance program administered by the United States government providing health insurance coverage to people 65 years of age or older, as well as those who have a disability and meet other criteria. Medicare has two primary parts:
  - Part A, hospital insurance, helps cover inpatient hospital care and some follow-up care such as home health services and hospice care.
  - Part B, medical insurance, helps pay for services by physicians, nurse practitioners, and physical therapists as well as laboratory tests, diagnostic x-ray and therapy, preventive screening tests, surgical supplies, casts, splints, renal dialysis, diabetic supplies, etc.

- **Medicaid** is a joint federal and state program that helps pay medical costs for people with low incomes and limited resources. State participation is voluntary, but all states have taken part since 1982, though benefits vary from state to state. Each state administers its own program and may use its own unique name, such as MediCal in California, MassHealth in Massachusetts, and TennCare in Tennessee. Providers of health services, including physical therapy, must be authorized by the designated state government agency.

- **State Children’s Health Insurance Program (SCHIP or CHIP)** is a program administered by the United States Department of Health and Human Services that provides matching funds to states for health insurance to families with children. The program is designed to cover uninsured children in families with incomes that are modest but too high to qualify for Medicaid. In 2009 the program was expanded to add 4 million children, pregnant women, and first-time legal immigrants, with no required waiting period.
AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA, 2014) of 1990 is a broad-reaching civil rights statute. Amended in 2008 to broaden protections for workers with disabilities, it protects the rights of people with a variety of ailments, including persons infected with human immunodeficiency virus (HIV) and those with respiratory and musculoskeletal disorders. Its provisions include measures of particular interest and relevance to physical therapists, such as access to public buildings, equal legal protection of persons living with disabilities, and nondiscrimination in employment situations.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 limits the extent to which health insurance plans may exclude care for pre-existing conditions and creates special programs to control fraud and abuse within the healthcare system. The most well-known provision of the act is its standards regarding the electronic exchange of sensitive, private health information. Known as privacy standards, these rules 1) require the consent of clients to use and disclose protected health information, 2) grant clients the right to inspect and copy their medical records, and 3) give clients the right to amend or correct errors. Privacy standards require all hospitals and healthcare agencies to have specific policies and procedures in place to ensure compliance with the rules.

PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA)

The Patient Protection and Affordable Care Act of 2010 initiated a series of healthcare reforms to give Americans new rights and benefits by “helping more children get health coverage, ending lifetime and most annual limits on care, allowing young adults under 26 to stay on their parents’ health insurance, and giving patients access to recommended preventive services without cost” (Healthcare.gov, 2014).

Other new benefits include 50% discounts on brand-name drugs for seniors in the Medicare “donut hole” and tax credits for small businesses that provide insurance to employees. Each year until 2018, it is planned that additional rights, protections, and benefits will be instituted. These benefits will be paid for by an individual mandate requiring individuals not covered by Medicaid, Medicare, or other government program to maintain insurance or pay a penalty, unless they are a member of a recognized religious sect (Healthcare.gov, 2011).

State Physical Therapy Practice Acts

In the United States, physical therapist licensure is required in all 50 states as well as in the District of Columbia, Puerto Rico, and the Virgin Islands. Licensure is required in each state in which a physical therapist practices. All physical therapy licenses must be renewed on a regular basis (which varies by state), and most states require the completion of some level of continuing education in order for a licensee to qualify for license renewal.
Physical therapists must practice within the scope of physical therapy practice defined by individual states’ physical therapy practice acts. A state’s physical therapy practice act includes rules and requirements for educational institutions and practitioners regarding:

- Scope of practice
- Licensure
- Competency
- Disciplinary sanctions
- Supervision of physical therapist assistants and aides

Each state practice act may have language that differs from other states in regard to evaluations/reevaluation, delegation and supervision of physical therapist assistants and/or physical therapy aides, specific areas of practice restriction, or issues of direct access.

The goal of physical therapy practice acts and their administrative boards is to protect the public by setting standards for physical therapy education and practice. It is the responsibility of practitioners to know and abide by the provisions of these acts and abide by the rules and regulations of the state(s) in which they are licensed (APTA, 2014; FSBPT, 2014b).

**COMPLAINTS AND VIOLATIONS**

It is a criminal offense to violate provisions of a state’s physical therapy practice act. When individuals or agencies believe a physical therapist or physical therapist assistant has violated a provision of a state’s physical therapy practice act, they may complain to the administrative board of the pertinent state. This board will investigate the allegations, and if sufficient evidence is found to support the complaint, state attorneys may file a complaint against the licensee.

Because a state license cannot be taken away without due process, licensees have the right to a public hearing before the board, to be represented by an attorney, and to present witnesses on their own behalf. Following such a hearing, the board may: 1) take no action, 2) reprimand the licensee, 3) suspend or revoke the individual’s license, or 4) place the licensee on probation.

Although physical therapy practice acts do vary from state to state, they contain similar grounds for complaints, such as:

- Obtaining a license by fraud
- Practicing in a grossly incompetent or negligent manner
- Diverting controlled substances for personal use
- Being convicted of a felony

It is the responsibility of license holders to know, understand, and obey the rules and regulations of the state in which they are licensed to practice. *(See “Resources” at the end of this course for an list of physical therapy practice acts by state.)*
FEDERATION OF STATE BOARDS OF PHYSICAL THERAPY

All fifty U.S. states, as well as the District of Columbia, Puerto Rico, and Virgin Islands, belong to the Federation of State Boards of Physical Therapy (FSBPT). This organization develops and administers the National Physical Therapy Examination (NPTE) for both physical therapists and physical therapist assistants. These examinations evaluate the basic entry-level competence for first-time licensure of a physical therapist or physical therapist assistant within the aforementioned 53 jurisdictions. The NPTE also helps regulatory authorities to evaluate potential licensure candidates and provide standards that are comparable from jurisdiction to jurisdiction.

In addition to the NPTE, the organization has developed a number of relevant documents, including the following:

- Model Practice Act for Physical Therapy: For use by states and other jurisdictions when reviewing and updating their practice acts
- Continuing Competence Initiative: For use by licensing boards in evaluating the continuing competence of licensees who are eligible for licensure renewal
- Coursework Tool: For use by licensing boards and credentialing agencies when evaluating non-U.S. educational programs for equivalence to United States accredited programs
- Basis for Disciplinary Action Definitions and Descriptions: For use by physical therapy regulatory bodies in order to categorize the basis for disciplinary action (FSBPT, 2014c)

CASE

Alexa is a physical therapist and works in an outpatient pediatric clinic. Though she excels in her professional and clinical responsibilities, she has lately been struggling with some personal issues, including a health crisis with her elderly father and a recent acrimonious divorce. She also just found out that her teenaged son dropped out of high school.

With all the recent upheaval in her personal life, Alexa accidentally misplaced the letter from the state physical therapy board that contained the forms for her upcoming licensure renewal deadline. Three weeks after the renewal deadline had passed, the director of the pediatric practice where Alexa works requested updated copies of state licenses for all therapist employees. Alexa realized that she had forgotten to renew her license, which was now expired. To make matters worse, Alexa also realized that she had not completed sufficient continuing education to be eligible for license renewal. Alexa was extremely upset and embarrassed and became tearful in her manager’s office as she described the recent stressors in her life that had contributed to her forgetting to complete her license renewal requirements.

Discussion

Alexa’s manager, Jade, was a very supportive employer and knew Alexa to be a loyal employee and highly competent therapist who had simply made a mistake. Jade gently explained to Alexa...
that she would have to cease practicing immediately and begin the process of reinstating her lapsed license in accordance with the practice act specific to their state, including payment of applicable penalties and completion of requisite paperwork. In addition, they would need to call the state physical therapy board in order to explain the situation and to determine if Alexa were liable for any disciplinary action due to having inadvertently practiced with a lapsed license for three weeks.

They discussed Alexa’s other recent personal stressors, and Jade suggested that Alexa use some of her accrued paid time off to take a pediatric continuing education course that was being offered out of state. Jade assisted Alexa in finding some respite care for her elderly father and arranged for Alexa’s son to stay with relatives temporarily, allowing Alexa to enjoy some much-needed down time while simultaneously completing the continuing education that she needed to reinstate her license.

CIVIL LAW AND PHYSICAL THERAPY PRACTICE

Civil law is concerned with harm against individuals, including breaches of contracts and torts. A civil action is considered a wrong between individuals. Its purpose is to make right the wrongs and injuries suffered by individuals, usually by assigning monetary compensation. It is important to be aware that an action can potentially be both criminal and civil in nature (Stanford & Connor, 2012).

A contract is a legally binding agreement between two or more parties. Breaking such an agreement—such as a written employment agreement between a healthcare agency and a physical therapist—is called a breach of contract. Both parties to a contract must do exactly what they agreed to do or they risk legal action being taken against them. For that reason, it is vital that each party clearly understands all the terms of a contractual agreement before signing it (Hamilton, 1996).

A tort is a wrong against an individual. Torts may be classified as either intentional or unintentional.

- Intentional torts include assault and battery, false imprisonment, defamation of character, invasion of privacy, fraud, and embezzlement.

- Unintentional torts are commonly referred to as negligence. In order to be successfully claimed, negligence must consist of four elements: duty, breach of duty, causation, and damages. (Stanford & Connor, 2012)
Intentional Torts

ASSAULT AND BATTERY

Assault is doing or saying anything that makes people fear they will be touched without their consent. The key element of assault is fear of being touched, for example, threatening to force a resistant patient to get out of bed against his/her will.

Battery is touching a person without consent, whether or not the person is harmed. For battery to occur, unapproved touching must take place. The key element of battery is lack of consent. Therefore, if a man bares his arm for an injection, he cannot later charge battery, saying he did not give consent. If, however, he agreed to the injection because of a threat, the touching would be deemed battery, even if he benefited from the injection and it was properly prescribed.

Except in rare circumstances, clients have the right to refuse treatment. Other examples of assault and battery are:

• Forcing a client to submit to treatments for which he or she has not consented orally, in writing, or by implication
• Moving a protesting client from one place to another
• Forcing a client to get out of bed to walk
• In some states, performing blood alcohol tests or other tests without consent
  (Hamilton, 1996)

FALSE IMPRISONMENT

False imprisonment is confining people against their will by physical or verbal means. Some examples of false imprisonment are:

• Restraining a client for non–medically approved reasons
• Restraining a mentally ill client who is not a danger to self or others
• Detaining an unwilling client in the hospital if the client insists on leaving
• Detaining a person who is medically ready for discharge for an unreasonable period of time
  (Hamilton, 1996)

DEFAMATION OF CHARACTER

Defamation of character is communication that is untrue and injures the good name or reputation of another or in any way brings that person into disrepute. This includes clients as well as other healthcare professionals. When the communication is oral, it is called slander; when it is written, it is called libel. Prudent healthcare professionals: 1) record only objective data about clients, such as data related to treatment plans and 2) follow agency policies and approved channels
when the conduct of a colleague endangers client safety (Hamilton, 1996; Stanford & Connor, 2012).

**INVASION OF PRIVACY**

Invasion of privacy includes intruding into aspects of a patient’s life without medical cause. Invasion of privacy is a legal issue separate from violations of HIPAA’s privacy rule due to the fact that invasion of privacy goes beyond protected health information.

### CASE

Riley, a physical therapist at the local hospital, was chatting with her neighbor, Sonja, an occupational therapist who works in home health, while they did yard work together. When they were finished digging up a flowerbed, Sonja shook out her wrists and said, “Wow, I feel like I just gave myself carpal tunnel syndrome from all that digging!”

“That reminds me,” Riley said. “You’ll never guess who I saw at the hospital today—remember Manny, who used to date your sister? Well, he was just referred to our outpatient clinic for treatment of carpal tunnel symptoms! I always thought he was pretty tough, but it turns out that he’s a real wimp when it comes to pain. Makes you wonder if he’s all that good a mechanic, really.” Suddenly, Riley realized she had violated a core value of her professional code of ethics by disclosing confidential client information without authorization, as well as voicing personal and non-objective opinions about this client.

### Discussion

Riley violated principle 2E in the Code of Ethics for the Physical Therapist, stating, “Physical therapists shall protect confidential patient/client information and may disclose confidential information to appropriate authorities only when allowed or as required by law.”

Not only had Riley violated a principle of the Code of Ethics by disclosing confidential information, if the matter were to become known to her client, a legal suit of slander could be realistically be brought against Riley. Even though it may be tempting to discuss clinical aspects of client care with friends who are also healthcare professionals, the Code of Ethics expressly prohibits sharing of confidential patient information with unauthorized individuals.

**FRAUD**

Fraud includes deceitful practices in healthcare and can include the following:

- False promises
- Upcoding (such as billing group treatment sessions as individual therapy)
- Insurance fraud
EMBEZZLEMENT

Embezzlement is the conversion of property that one does not own for his or her own use, such as when an employee appropriates funds from a company bank account (Stanford & Connor, 2012).

Unintentional Torts: Negligence

It is the legal responsibility of all healthcare professionals to uphold a certain standard of care. This standard is generally measured against an established norm of what other similarly trained professionals would do if presented with a comparable situation.

ELEMENTS OF NEGLIGENT CARE

In the case of negligent care, four components must be present in order to establish a successful unintentional tort claim.

1. **Duty** is established when a healthcare professional agrees to treat a patient.
2. **Breach of duty** occurs when a healthcare professional fails to act in a manner consistent with what another member of that health profession would prudently do in a similar situation.
   - Misfeasance occurs when a mistake is made (such as administering a treatment to the wrong patient).
   - Nonfeasance occurs when a healthcare professional fails to act (such as not assisting a spinal-cord injured patient with proper pressure relief during a treatment session).
   - Malfeasance occurs when the negligence action involves questionable intent (such as physically pulling a resistant patient from bed and causing bruises on the patient’s wrist).
3. **Causation** requires that an injury of ill-effect to the patient must be proven to have been a direct result of the action (or lack of action) taken by the healthcare professional.
4. **Damages** refers to the actual injuries inflicted by the accused for which compensation is owed. (Stanford & Connor, 2012)

PRINCIPLES AFFECTING MALPRACTICE ACTIONS

Professional negligence (malpractice) is the improper discharge of professional duties or failure to meet standards of care, resulting in harm to another person. Four important principles affect malpractice actions: individual responsibility, *respondeat superior*, *res ipso loquitur*, and standard of care.
• **Individual responsibility** affirms the principle that every person is responsible for his or her own actions. Even when several other people are involved in a situation, it is difficult for any one person to remain free of all responsibility and shift all responsibility to others.

• **Doctrine of respondeat superior** ("let the master speak") holds employers indirectly and vicariously liable for the negligence of their employees who are acting within the scope of their employment at the time a negligent act occurs. This doctrine allows an injured party to sue both the employee and employer, to sue only the employee, or to sue only the employer for alleged injuries. Although each person is responsible for her or his own acts, professionals with oversight duties are held responsible for the actions of those they supervise. For example, a physical therapist is held accountable for the actions of physical therapist assistants or physical therapy aides that s/he supervises.

• **Doctrine of res ipso loquitor** ("the thing speaks for itself") is a rule of evidence designed to equalize the positions of plaintiffs and defendants in the situation when plaintiffs (those injured) may be at a disadvantage. The rule allows a plaintiff to prove negligence by circumstantial evidence when the defendant has the primary, and sometimes only, knowledge of what happened to cause an injury.

Generally speaking, plaintiffs must prove every element of a case against defendants. Until they do, the court presumes that the defendants did meet the applicable standard of care. However, when the court applies the *res ipso loquitor* rule, defendants must prove that they were not negligent. Plaintiffs can ask the court to invoke the *res ipso loquitor* rule if three elements are present:

1. The act that caused the injury was in the exclusive control of the defendant.
2. The injury would not have happened in the absence of negligence by the defendant.
3. No negligence on the part of the plaintiff contributed to the injury.  
   (Fremgen, 2011)

• **Standard of care** refers to the level of care provided to a patient that would be reasonably expected to be provided by another individual in a comparable situation.

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**CASE**

Aron Cohen, PT, DPT, a newly licensed physical therapist, helped Mr. Singh get out of bed to attempt ambulation for the first time since his recent hip ORIF. When Aron had assisted Mr. Singh to standing, the patient in the other bed suddenly asked Aron to get her a glass of water. Aron, thinking that Mr. Singh was steady on his feet, left him standing alone and went across the room to the other patient. Mr. Singh lost his balance and fell to the floor, sustaining a significant head laceration.

**Discussion**

Mr. Singh sued Aron for negligence on the basis of *res ipso loquitor*. All three necessary legal elements were present:
1. The act that caused the injury was in Aron’s exclusive control.
2. The injury would not have happened in the absence of negligence by Aron.
3. There was no negligence on the part of Mr. Singh that contributed to the injury.

Mr. Singh won the case and Aron was held liable for his injury.

**Preventing Malpractice Claims**

Because today’s healthcare consumers are more likely to take an active role in their care, more likely to question the quality of healthcare services, and more apt to take legal action against providers, physical therapists must take precautions to minimize the risk of malpractice claims being brought against them. Below are some suggested actions that may help prevent malpractice claims. (This information is in no way intended to be a substitute for professional legal advice.)

- **Delegate duties cautiously.** Physical therapists are responsible for subordinates, equipment, and supplies. When assigning a task to a PTA or a physical therapy aide, physical therapists should ensure the task is not beyond the ability or scope of practice of the subordinate because, if an error occurs, the supervising therapist is responsible.

- **Develop self-awareness.** Physical therapists must recognize their own strengths and weaknesses and use continuing education to expand their knowledge and skill set. They should not be afraid to admit lack of knowledge in some clinical areas and should not take on patients whose rehabilitative needs lie outside of their skill set or scope of practice.

- **Follow agency policies and procedures.** These documents are designed to prevent errors, injuries, and accidents. If an error occurs and legal action results, the court will want to know if the practitioner followed established policies and procedures.

- **Document actions accurately.** Legally, if an action is not documented, it did not happen. Notes should be written accurately, objectively, and without subjective judgments that could be construed as libelous.

- **Write detailed incident reports.** Practitioners must document in detail all errors, injuries, and accidents. Because long periods of time may elapse between an incident and court action, an incident report may be the only detailed account of what happened.

- **Recognize suit-prone clients and intervene appropriately.** When people feel frightened and powerless, they may become critical and demanding. By reacting defensively or avoiding such clients, a physical therapist may inadvertently confirm clients’ fears and/or foster their anger. When physical therapy professionals listen actively, discuss treatment plans openly, and involve clients in decision-making, they help to foster trust and respect.

- **Prevent accidents.** Be alert for hazards that cause injury. Spilled water, broken equipment, protruding apparati, exposed electrical wires, and cluttered hallways are
accidents waiting to happen. When they do, people are more likely to suffer injuries, and healthcare professionals may be held responsible.

- **Become informed consumers of professional liability insurance.** The possibility of being sued is real. Lawsuits are costly and the price of defending oneself may be immense. Given these realities, physical therapy professionals should become informed consumers of professional liability insurance (see below).
  (Hamilton, 1996)

**CASE**

Seamus works as an independent physical therapist in a joint practice with another physical therapist. Besides taking patients on a direct-access basis, they also receive referrals from various physicians in the local healthcare community. One day Seamus received a referral from an orthopedic surgeon for Ms. Olanna, who had just undergone an R-sided carpal tunnel release. At her physical therapy evaluation, Ms. Olanna told Seamus how much she had suffered with the injury, how long she had waited for care, that she had once sued her employer, and how angry she was with the entire medical establishment. Seamus had never dealt with a suit-prone client before but realized that he should be especially cautious and thoughtful in his interactions with Ms. Olanna. Seamus checked his professional liability insurance policy to be sure it was in effect, established consistent two-way communication with the referring surgeon, and meticulously documented the evaluation and all subsequent physical therapy treatments provided. At Ms. Olanna’s second visit, Seamus listened attentively to the client, discussed his recommended treatment plan with her in detail, and involved Ms. Olanna in decision-making in regards to every aspect of her care.

After several visits, Ms. Olanna began to trust and respect Seamus. She gradually regained the strength and mobility in her wrist and verbalized pleasure at being able to return to her hobby of playing the cello. Upon her discharge from physical therapy, Ms. Olanna told Seamus how frightened and powerless she had felt and how much she appreciated the care that Seamus had given her, particularly the considerate way that he had actively sought her opinion and listened to and validated her thoughts and feelings.

**Professional Liability Insurance**

Professional liability insurance shifts the cost of a suit and its settlement from a person to an insurance company. Such insurance covers acts committed by an individual when he or she is functioning in a professional capacity.

Employer policies cover healthcare professionals only while they are on the job working for that employer within the scope of the employer’s job description. Individual policies give named holders more power to control decisions than if they are insured only under the policy of the employer. Physical therapists in independent practice need to know if an insurance policy covers them as independent practitioners or if they are only covered when they are employed by a healthcare agency.
Many policies exclude coverage of criminal acts, such as intentional torts (assault, battery, false imprisonment, etc.) and disciplinary actions brought by licensing boards against physical therapists and physical therapist assistants.

A liability insurance policy is a legal contract between an insurance company and a policyholder. False information on the application may void the policy.

**TYPES OF COVERAGE**

- **Occurrence** covers any incident that occurs during the time a policy is in effect, no matter when a claim is filed and even after the policy ends.
- **Claims-made** covers only claims made during the time a policy is in effect. This type of coverage is less expensive than occurrence coverage because it is limited to a specific period of time.
- **Tail-coverage** may be purchased by the insured. In effect, it turns a claims-made policy into an occurrence policy.

**COVERAGE LIMITS**

No policy is limitless. Some important limitations include:

- Maximum dollar amounts that will be paid in a settlement. Excess judgments (over the amount covered by the policy) must be paid by the defendant from personal assets.
- Negligent acts of those the policyholder is supervising (such as physical therapist assistants).
- Specific negligent acts of the policyholder (such as misuse of equipment, errors in reporting or recording, or failure to properly instruct clients).
- Whether the policy will provide protection if the employer sues the policyholder.

**DURATION OF COVERAGE**

Liability insurance policies are contracts that are renewed or canceled each year. The policy usually states how it is to be canceled and how many days’ notice must be given.

**RIGHT TO DECIDE ABOUT SETTLEMENTS**

Physical therapists and physical therapist assistants need to know if an insurance policy gives them the right to decide about the settlement of a case or if the insurance company has that right. This is an important issue because settlements become matters of public record and may adversely affect future opportunities.
Responding to Claims

If served with a summons and complaint, healthcare professionals are well-advised to act promptly. Doing nothing (i.e., failing to answer the complaint) could result in a default judgment. The following are some suggested do’s and don’t’s for responding to this type of situation. (Every case is unique, and the information in this course is in no way intended to be a substitute for professional legal advice.)

DO

For professionals who are personally insured:

- Immediately contact the liability insurance provider for advice. If not contacted within the time specified by the policy, the insurance company may refuse to provide coverage.
- Promptly complete any informational forms from the insurer.
- Follow all instructions from the insurance carrier (e.g., contacting local counsel). Send any pertinent correspondence by certified mail, return receipt requested. Save all receipts.
- Create one’s own legal file of all documents, receipts, and correspondence pertinent to the case.
- Contact the legal department of the institution where the incident occurred.
- Work closely with the attorney (assigned or otherwise).
- Take steps to protect one’s personal property; many states have homestead laws that permit professionals to protect personal property (such as one’s home) from judgments against them.

For professionals who are not personally insured:

- Contact the legal department of the institution where the incident occurred to notify them of the situation.
- Work closely with the attorney assigned to the case by the institution’s insurance company.
- If it seems that one’s interests are not being protected, retain one’s own legal counsel, preferably an attorney who is experienced in medical malpractice.

DON’T

Whether insured or not, individuals named in a complaint should not:
• Talk to anyone about the incident except the insurance carrier and an attorney, including personal and professional acquaintances and/or news media.

• Sign any papers or give any written statements to plaintiffs or their attorneys without legal counsel.

• Consider trying to defend oneself against a lawsuit without legal counsel.

**CASE**

Francisco, a physical therapist assistant, has worked in a busy outpatient clinic for several years. One day, as he walked to his car, a stranger stepped up to him and asked if he was Francisco Acal. When he said yes, the man handed him a legal summons. Francisco was stunned and confused. He opened the envelope and read the enclosed documents. He did not recognize the name of the person who was bringing the “complaint,” and he did not remember the described incident. Francisco was unsure of what to do. He had never purchased professional liability insurance for himself, but he was sure that the clinic where he worked had malpractice insurance for its employees.

The following morning everyone in the clinic was talking about the pending suit, but no one had any concrete information. The rehab director suggested that Francisco contact the clinic’s legal department. Francisco did so, and the secretary who answered the phone asked him to come to the office. When Francisco arrived in the legal department, he was met by a man who introduced himself as the facility’s attorney. He explained that a former patient had brought charges against everyone in the department who had had any contact with him, including Francisco. The attorney told Francisco that he would represent the agency and its employees and instructed him not to talk to anyone about the case or sign any written statement without his advice and counsel.

After several months, the attorney informed Francisco that the case had been settled out of court. Francisco was enormously relieved but decided that he would purchase his own professional liability insurance so that in the future he would not be solely dependent on an employer’s legal counsel.

**CONCLUSION**

As physical therapy providers assume an increasingly autonomous role in the delivery of rehabilitative services, it is of vital importance that they adhere strictly to existing laws and ethical principles. Physical therapists and physical therapist assistants are responsible for maintaining the highest standards of professional conduct. These standards arise from ethical principles, fundamental concepts by which people gauge the rightness or wrongness of behavior, and laws, which flow from ethical principles and are limited to specific situations, codified by detailed language and formulated by an authority with power to enforce them.
Ethical standards of behavior for physical therapy professionals have been identified by the American Physical Therapy Association and codified into law in the physical therapy practice acts of individual states and other jurisdictions within the United States. Continuing competence in both ethics and jurisprudence is vital for all practicing physical therapy professionals, regardless of experience level or practice setting.

RESOURCES

Affordable Care Act
http://www.healthcare.gov/law/introduction/

Americans with Disabilities Act
http://www.ada.gov/2010_regs.htm

APTA Core Ethics Documents
http://www.apta.org/Ethics/Core/

Centers for Medicare & Medicaid Services
http://www.cms.hhs.gov

HIPAA General Information
http://www.cms.hhs.gov/hipaaGenInfo

Licensing Authorities Contact Information (Federation of State Boards of Physical Therapy)
https://www.fsbpt.org/LicensingAuthorities/

Practice Acts by State
http://www.apta.org/Licensure/StatePracticeActs/

REFERENCES


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You must score 70% or better on the test and complete the course evaluation to earn a certificate of completion for this CE activity.

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ACCREDITATION INFORMATION FOR WILD IRIS MEDICAL EDUCATION
1. Ethics is concerned with:
   a. Questioning the nature of values as they apply to human conduct.
   b. Protecting society from actions that directly threaten its order.
   c. Punishing members of society for actions that are ethically wrong.
   c. Organizing people to rise up and change society.

2. A physical therapist takes a rollator walker from the hospital storage closet and quietly gives it to a patient who needs the walker in order to safely ambulate but is uninsured and cannot afford to purchase one. In taking this action, the therapist is motivated by the desire to protect the patient from future harm. This patient scenario is an example of which type of ethical theory?
   a. Deontological
   b. Normative
   c. Teleological
   d. Descriptive

3. When a physical therapist refuses to provide treatment based on a patient’s sexual orientation, the therapist is violating which ethical principle?
   a. Nonmaleficence
   b. Justice
   c. Autonomy
   d. Beneficence

4. When a physical therapist demands that a male patient get out of bed and participate in therapy after the patient repeatedly states that he does not feel well and wants to stay in bed, the therapist is violating which ethical principle?
   a. Beneficence
   b. Nonmaleficence
   c. Autonomy
   d. Justice

5. Upon a patient’s admission, Medicare- and/or Medicaid-certified healthcare facilities comply with the Patient Self-Determination Act by:
   a. Informing the patient about the expected cost of his or her treatment.
   b. Asking the patient if he or she has an advance directive in place.
   c. Educating the patient about the risk of contracting healthcare-associated infections.
   d. Determining the patient’s other sources of health insurance coverage.
6. Which individual is **not** a member of a healthcare facility’s ethics committee?
   a. A chaplain
   b. A patient’s family member
   c. A bioethicist
   d. An oncologist

7. The purpose of a code of ethics is to:
   a. Describe the scope of practice of a profession.
   b. Describe standards of behavior of a profession.
   c. Establish laws for the practice of a profession.
   d. Serve as a substitute for a state physical therapy practice act.

8. A physical therapist specializing in women’s health volunteers one weekend each month at a community clinic that serves low-income women and children. The therapist receives no compensation for the provision of such services. Which American Physical Therapy Association Core Value is the therapist most exemplifying?
   a. Excellence
   b. Accountability
   c. Social Responsibility
   d. Integrity

9. Which of the Standards of Ethical Conduct for the Physical Therapy Assistant is violated when a physical therapy clinical instructor initiates a sexual relationship with a physical therapy assistant student?
   a. Physical therapist assistants shall support organizational behaviors and business practices that benefit patients/clients and society.
   b. Physical therapist assistants shall make sound decisions in collaboration with the physical therapist and within the boundaries established by laws and regulations.
   c. Physical therapist assistants shall be trustworthy and compassionate in addressing the rights and needs of patients/clients.
   d. Physical therapist assistants shall demonstrate integrity in their relationships with patients/clients, families, colleagues, students, and other healthcare providers, employers, payers, and the public.

10. Which statement regarding laws is **true**?
    a. Laws give specific directions and detailed limitations about human actions.
    b. Laws are broad, general principles to guide human behavior.
    c. Laws are nonspecific precepts about proper human interaction.
    d. Laws give guidance for how people should behave without penalty.
11. Rules established by a state board of physical therapy are examples of:
   a. Common law.
   b. Administrative law.
   c. Statutory law.
   d. Constitutional law.

12. A physical therapist and a physical therapist assistant violate a regulation of the physical therapy practice act in their state. Their offense is categorized as a:
   a. Criminal misdemeanor.
   b. Criminal felony.
   c. Civil tort violation.
   d. Civil contract violation.

13. A federal law specifically dealing with the rights of patients in regard to private and/or sensitive healthcare information is the:

14. The goal of state physical therapy acts is to:
   a. Create an administrative body to define physical therapy.
   b. Describe the scope of practice of physical therapy.
   c. State the competency requirements of physical therapists.
   d. Protect the public by setting standards of education and practice.

15. Which action issued by a state board of physical therapy is not acceptable following a disciplinary hearing of a licensed physical therapist?
   a. Reprimanding the licensee
   b. Incarcerating the licensee
   c. Suspending or revoking the therapist’s license
   d. Taking no action at all
16. A physical therapist in the hospital receives a consult to evaluate a patient who has just undergone a left hip open reduction internal fixation (ORIF). The patient’s postoperative precautions are for toe-touch weight bearing (TTWB) only at this time. The physical therapist fails to notice the level of weight-bearing precaution indicated and initiates gait training with weight bearing as tolerated (WBAT) with the patient. Two treatment sessions are completed before the therapist realizes his error. On the second afternoon following WBAT gait training, the patient begins to complain of severe pain in the operative hip. The therapist’s action is an example of:

a. Malfeasance.
b. Negligence.
c. An intentional tort.
d. A criminal offense.

17. When working with a patient who seems likely to seek legal action, a physical therapist’s action is to:

a. Listen actively and attentively to the patient and document treatment diligently.
b. Respond defensively whenever the patient mentions lawsuits or expresses displeasure.
c. Delegate treatment whenever possible to a physical therapist assistant or to a physical therapy aide.
d. Advise the patient that a negative attitude will likely have an adverse effect on his or her treatment outcome.