



# HOC 64: Law & Healthcare

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# LAW

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- Health care providers have a direct impact on the lives of those they treat.
- All health care providers have a duty to provide the best possible care for every patient.
- Obligated to protect each patient's civil, constitutional, and human rights.



# LAW

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- *Civil rights* are the legal rights held by all U.S. citizens.
- *Constitutional rights* are the rights afforded to all citizens throughout the United States.
- *Human rights* are the fundamental rights of all people regardless of citizenship status.



# LAW

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- Citizens depend on a legal system to protect them from wrongdoing.
- Health Care professionals must understand the legal nature of the patient-provider relationship.
- Ignorance of the law is no excuse!  
Especially, in the health care professions.



# LAW

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- Health Care Workers are obligated to protect each patient's *civil, constitutional and human rights*.
- Health Care Workers are responsible for knowing and obeying laws, regulations, policies and community standards as related to their practice of medicine, allied health and nursing.



# Types of Law\*

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- Laws are rules of conduct enforced by the government.
  - *Public Law*- issues between government and citizens.
    - Criminal
    - Constitutional
    - Administrative
  - *Civil Law*-issues between citizens\*
    - Medical Malpractice

# Civil Law\*

## Medically related

- Tort Law
  - Laws covering breach of legal services.
  - Injuries suffered by someone as the result of another persons wrongdoing or misdeed.\*\*
  - Most lawsuits against health care worker fall into this category.





# Types of Law

## COMMON, STATUTORY, TORT

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- *Common law* is a traditional civil law of an area or region resulting from rulings by judges on individual cases/disputes.
- *Statutory law* is enacted by federal, state and local legislators and enforced by the court system.
- *Tort law is any wrongful act that results in harm, for which restitution or compensation must be made. \*\*\**



# TORT LAW

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- Most legal issues in health care involve Tort Law.\*\*
- Unintentional torts- accidents or mistakes that result in harm.
  - Prescription error or incorrect information entered into chart.
- Intentional torts- deliberate acts intended to cause harm.\*\*
  - Slander or Libel

# Unintentional Torts\*

- Negligence\*\*\*\*
  - Professional Negligence (Malpractice)





# Examples of Intentional Torts

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- Assault
- Battery
- False Imprisonment
- Defamation of Character
  - Slander
  - Libel



# Assault & Battery\*

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- Assault is *the threat or attempt* to touch a patient without his or her permission.
- A competent patient has the right to refuse medical care. You can not force them to do something they do not want to do.
- Example: Threatening a patient who does not take medicine with “forcing it down their throat with an NG tube!”

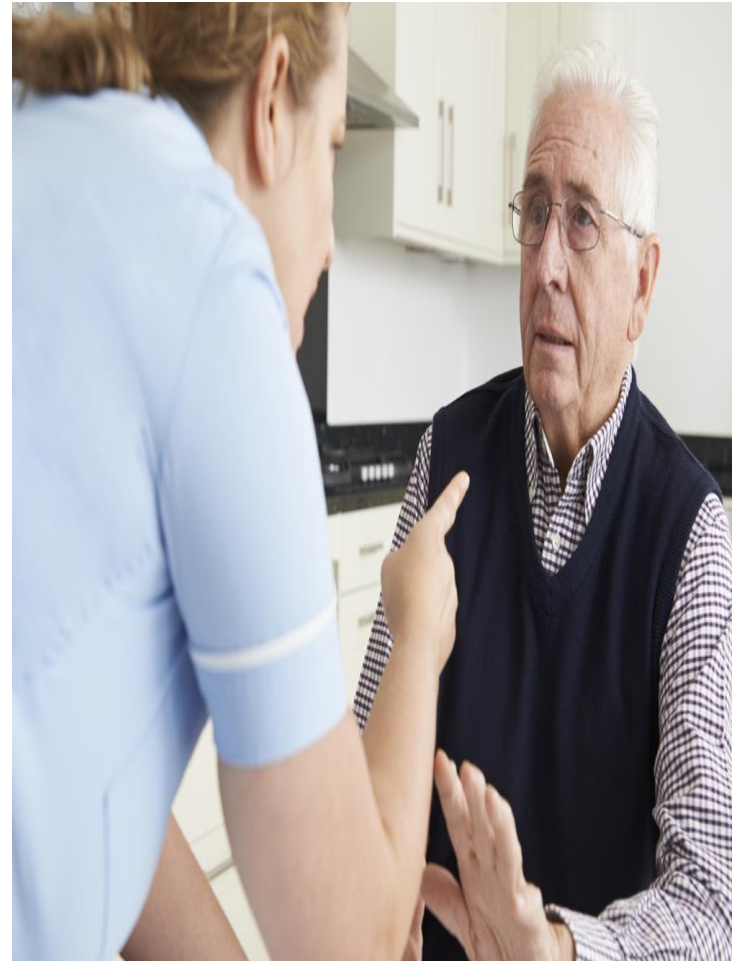
# Assault & Battery\*

- Actually putting the NG tube down their throat is called *Battery*.
- *Why?* Battery is touching a non-consenting patient.



# Assault & Battery\*

- Assault and Battery charges may result when:
  - Improperly or aggressively touching a patient.
  - Threatening a patient.
  - Forcefully performs a procedure without the patient's permission.





# False Imprisonment\*

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- *Patients must agree to medical treatment.*
- *Restraining patients or restricting their freedom could be false imprisonment.*
- “If a patient wants to leave the office or ER against medical advice, they are within their rights.”
- Don’t threaten to put a Alzheimer patient in restrains if it is not warranted!

# False Imprisonment



# Defamation of Character\*

- Doing harm to a person's reputation.
  - *Slander: When harm is **spoken**.*
  - *Libel: When harm is **written**.*

## DEFAMATION



## Libel-Slander

# Break





# Selected Federal Laws & the Health Care professions

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# Americans with Disabilities Act (ADA)

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- ADA is *Civil Rights Law* that prohibits discrimination on the basis of disability in:\*
- **Employment**
- State and local government
- Public accommodations
- Commercial facilities
- Transportation
- Telecommunications
- It also applies to the United States Congress



# Americans with Disabilities Act\*

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- An individual with a disability is defined by the ADA as:
  - A physical or mental impairment that substantially limits one or more major life activities.
  - A history or record of such an impairment.
  - A person perceived by others as having such an impairment.
  - *These conditions do not need to be severe or permanent.\**



# Americans with Disabilities Act

## Partial list of conditions covered

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- Deafness
- Blindness
- Intellectual disability (formerly termed mental retardation)
- Partially or completely missing limbs or mobility impairments requiring the use of a wheelchair,
- Autism
- Cancer,
- Cerebral palsy,
- Diabetes
- Epilepsy
- Human Immunodeficiency Virus (HIV) infection
- Multiple sclerosis
- Muscular dystrophy
- Major depressive disorder
- Bipolar disorder
- Post-traumatic stress disorder
- Obsessive compulsive disorder
- Schizophrenia



# Americans with Disabilities Act

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- Employment
- State and local government
- Public accommodations
- Commercial facilities
- Transportation
- Telecommunications
- It also applies to the United States Congress



# Americans with Disabilities Act Employment\*

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- Hiring, advancement and discharge of employees, job training, and other terms, conditions, and privileges of employment.\*
- Provide *reasonable accommodations* to job applicants and employees with disabilities.\*
- A reasonable accommodation is a change in the way things are typically done that the person needs because of a disability.\*



# Child Abuse Prevention & Treatment Act\*

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- Report suspected abuse.
- Protects reporter.
- *Patient confidentiality does not exist in cases of suspected abuse.*



# Child Abuse Prevention & Treatment Act\*

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- Legally responsible to report
- Know facility/practice abuse plan
- Keep records, documentation is important for court case.
- *Confidential in all aspects of the case.*
- You must report, failure to report = legal disciplinary action *against you.*



# Good Samaritan Law\*

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- No person is required to give aid.
- Any first aid provided must not be in exchange for any reward.
- Medical professionals are typically not protected.\*\*



# Good Samaritan Law\*

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- If aid begins, responder must stay with victim until:
  - necessary to call for help
  - someone equal or higher
  - continuing to give aid is unsafe
- Responder is not legally liable for death, disfigurement, disability.



# HIPAA\*\*\*\*

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- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule
  - The Office for Civil Rights enforces the HIPAA Privacy Rule.



# Vulnerable Adults Act\*

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- Abuse, neglect, and defrauding vulnerable adults and the elderly are growing problems across the country.
- As the American population ages, the extent of abuse will likely grow.
- Protect persons who cannot help themselves if they are hurt or misused by others, children and adults.



# Vulnerable Adults Act\*

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- “Vulnerable adults”: elderly persons and adults with disabilities.
- Persons 18 years of age or older who:\*
- live in licensed facilities
- receive services from licensed agencies
- are in family settings but cannot report abuse or neglect themselves



# Vulnerable Adults Act

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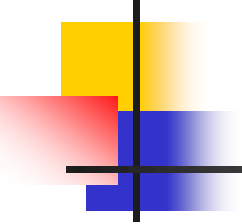
- Many forms of vulnerable adult and elder abuse may be litigated as traditional tort causes of action.
  - Injunctive or other equitable relief
  - Compensatory damages
  - Punitive damages
  - Pain and suffering damages
  - Attorney's fees and costs



# Vulnerable Adults Act Mandated Reporting\*\*\*

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- Types of Abuse: \*
  - Physical Abuse
  - Sexual Abuse
  - Psychological Abuse
  - Financial Exploitation
  - Neglect



# Vulnerable Adults Act

## Physical Abuse

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- Use of physical force against a vulnerable adult or elderly person that may result in bodily injury, physical pain, or impairment.



# Vulnerable Adults Act Sexual Abuse

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- Nonconsensual sexual contact of any kind with a vulnerable adult or elderly person:
  - Unwanted touching
  - Rape
  - Coerced nudity



# Vulnerable Adults Act

## Psychological Abuse

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- Infliction of anguish, pain, or distress on a vulnerable adult or elderly person through:
  - Verbal assaults
  - Insults
  - Threats
  - Intimidation
  - Humiliation
  - Harassment



# Vulnerable Adults Act Financial Exploitation\*

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- Illegal or improper use of a vulnerable adult or elderly person's funds, property, or assets:
  - cashing checks without authorization
  - misusing or stealing money or possessions



# Vulnerable Adults Act Financial Neglect\*

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- Willful refusal or failure to fulfill any part of a person's obligation or duties to a vulnerable adult or elderly person:
  - refusing or failing to provide food, clothing, shelter, medicine, and personal hygiene.



# Vulnerable Adults Act\*

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- California law, vulnerable adult and elderly victims of abuse are entitled to:
  - Compensatory damages Pain and suffering damages
  - Punitive damages
  - Attorney's fees
  - Equitable relief

# Break



# *Health providers are responsible (**liable**) for their negligent acts!!!!*

- The supervising physician/nurse may be responsible for your actions, but this does not exonerate ***you*** from risk of individual liability.



# Liability\*

- Liability:
  - The condition of being bound in law and justice to do something which may be enforced by the courts.
  - An obligation, *usually financial*.
  - The probable cost of meeting an obligation.



# Negligence\*

- ***Careless or senseless behavior that results in harm to the patient!***





# Malpractice in healthcare

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- Simply put: ***"Behavior or actions that are illegal or immoral and results in failure to do your job as a healthcare professional".\*\****

# Patient Advocacy\*

- The best interest of the patient is the primary concern.
- Protect the patient's rights.\*
- Did I mention to "Protect the patients' rights?"\*





# Patient Advocacy \*

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The health care professional tries to insure that:

- clients are aware of all options.
- clients are aware of all consequences.
- clients can make informed choices about health care.



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That's it folks.  
Any questions?

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