



Legal Self-Protection: Contracts, Confidentiality, Conflict

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Learning Objectives

At the conclusion of this course, the student will be able to:

1. Explain the concept of malpractice liability, and list five preventive steps to reduce exposure.
2. Define the following terms in connection with liability insurance: coverage, limits, definitions, exclusions, conditions.
3. Explain how the changing role of dietitians in the healthcare setting impacts their liability.
4. Name five kinds of patients most likely to sue.
5. List the four “elements of harm” which must be proven in a malpractice claim.
6. Explain why mistakes made by other practitioners may involve you in litigation, and how to protect yourself from liability for others actions.
7. List and explain four kinds of intentional torts.
8. Explain how to document these kinds of communications: oral, facsimile, written (letters or notes), e-mail
9. Discuss the challenges presented by web-based care.
10. Explain the essential elements of patient record-keeping.
11. Discuss confidentiality of employment records,

Dietetic practice, like all health care practice, involves some legal risk. We can become so fixated on the pitfalls that we lose sight of the pleasures associated with practice. “You can never be too careful” can mean focusing so closely on “defensive dietetics” (over-documenting, attending seminars and workshops, reading statutes, etc.) that there isn’t enough time left to make a living in the field. You *can* be too careful!

With this in mind, this module will provide tactics and information to make our job easier and safer. It may take some time and organization, but hopefully will help preserve the enthusiasm and fulfillment one can have practicing dietetics, while keeping legal exposure to a manageable level.

Malpractice liability

(Note: an education module published as part of this series deals more fully with malpractice issues.)

Fear of litigation is common among practitioners. Almost everyone has known a health professional who has been sued, even though that person is a competent professional with wonderful credentials and years of practice experience.

Savvy dietitians have malpractice insurance. In some cases, you may not be given a choice: consulting agreements often specify the type and amount of coverage that a dietitian must have in order to work for the contracting institution.

In a recent article in the *American Journal of Nursing* (2003), Croke says malpractice litigation is both professionally and emotionally devastating and can be financially disastrous. She outlines some guidelines for reducing potential liability:

- Maintain open, honest, respectful relationships and communication with patients and family members;
- Maintain competence in your specialty area of practice;
- Know legal principles and incorporate them into everyday practice;
- Practice within the bounds of professional licensure; and
- Know your strengths and weaknesses.

Insurance policy-speak

Before you apply for malpractice insurance, it is wise to consider how policies can vary. The chart below shows some components of a good malpractice policy.

Components of Liability Insurance	
Quoted premium:	<ul style="list-style-type: none"> • compare to others on the market • subject to future additional charges?
Liability limits:	<ul style="list-style-type: none"> • coverage limits include attorney and court costs?
Protection:	<ul style="list-style-type: none"> • coverage of risks you feel are necessary for your practice? • includes attorney and court costs?
Integrity:	<ul style="list-style-type: none"> • can you rely upon agent's oral answers to your questions?

Read the policy carefully, as onerous as that may seem. Generally policies will have several sections.

- The *coverage* section will tell about what actions are covered.
- A *limits* section will give information on the upper limit the insurer will pay per incident and for all incidents (policy aggregate).
- The *definitions* section tells you what certain terminology within the policy means.
- The *exclusions* section describes what is not covered, as in any dishonest, fraudulent, criminal or malicious act.
- The *conditions* section includes your specific duties in the event of an incident.

Liability Coverage

An important difference among insurance policies relates to the coverage for claims. Generally, a policy may either be a *claims made* or an *occurrence* policy.

Claims made policies provide coverage at the *date of notice* of a lawsuit or a claim demand. Occurrence policies provide coverage based on the *date of the occurrence* of events leading to the lawsuit. Such considerations are important not only while you're practicing, but also should you decide to close, buy, or sell a practice.

The insurance coverage you need will undoubtedly be determined by your practice. If you are working for a physician or an institution the *respondeat superior* doctrine ("Let the master serve") may apply to many cases. Dietitians are generally perceived to be acting on orders of the doctor or institution and, unless the order is erroneous, gain some protection when carrying out orders.

However, in writing medical nutrition therapy plans, RDs are increasingly writing nutrition orders, either formally or informally. RDs Silver and Wellman write, "Nutrition diagnosing and order writing is not only needed at all levels of care but also in all care settings" (Silver, 2003). Moreland and colleagues write of a program implemented in a long-term acute-care hospital. They note that malpractice insurance providers obviously need to be consulted when the scope of practice expands or changes for a group of providers (Moreland, 2002).

Support for this extension of the practitioners' role acknowledges that it will require advanced knowledge and skills. With expanded duties, the scope of practice for RDs would be expanded and would require additional standard practice guidelines (Silver, 2003).

A dietitian who goes into private practice, no matter her relationship with an institution, could be seen as claiming enough expertise to work without the supervision or cooperation of other health professionals. Her insurance coverage should take her self-employed status into consideration, as she is not necessarily protected by associates' policies.

When you take on new tasks or responsibilities, consider how these may affect your liability. If you hire an employee, contract with an organization for work, or volunteer formally or informally, you may not have the insurance coverage you need. The most common defense by an insurer in avoiding payment is simply that "the policy does not cover the claim."

The stakes are going up, in terms of risk and responsibility. RDs are now recognized as Medicare Medical Nutrition Therapy (MNT) providers for diabetes and kidney disease. Those electing to be MNT providers "are now exposed to potential civil and monetary penalties if they fail to meet specific civil and administrative regulatory statutes related to fraud and abuse of the Medicare program," writes Ellen Pritchett, Director of Quality Management and Outcomes Research for the ADA (Pritchett, 2002), and cautions that "Medicare MNT provider status does not mean business as usual."

For help in complying with Medicare provider guidelines, the ADA has several resources that are available at the association's website. (<http://www.eatright.org>)

With expanding responsibility comes expanding media. As more dietitians embrace communication through the Internet, the risk of being sued for advice and counseling increases. Traditional insurance has

traditionally been limited to where patients and providers are located. Now, your clients could be halfway across the country, or the world. Licensure considerations may also be relevant, if you are communicating with someone residing in another state. Agreements for service which specify that legal action must be brought in your home area are beyond the scope of this module, but if you work on-line you should discuss the degree of risk with your insurance carrier and tailor your coverage to suit.

You should not assume that what was good last year is good today. An ADA House of Delegates Report published in 2002 addresses malpractice coverage:

The ADA-sponsored professional liability insurance covers ADA active members in the provision of professional services as a trained dietetics professional functioning within the guidelines of their state and occupation... Upskilled duties may not be covered under liability insurance that covers usual and customary duties of the dietetics profession (ADA-HOD, 2002).

Brooke (1989) advises health professionals to fully understand what a professional liability policy does and does not cover:

Be sure to find out whether or not the policy covers you (and for how much) during arbitration, for loss or damage to the personal property of others, for damage to your employer's property, for costs taxed against you in any suit the company is defending (such as applications and premiums on bonds required in a suit), for loss of earnings, and for any other expenses you incur while assisting the company in the investigation or defense of a claim.

Even if your employer covers you under their professional liability insurance, you may want to get a personal policy. Your employer's policy will typically pay for your legal defense if you're named in a malpractice lawsuit and compensate the injured party if you're found negligent. Other actions, however, could be taken against you, such as review by your state disciplinary board. Attorneys Helm and Kihm caution that an employer's policy may not cover situations, such as breach of confidentiality or invasion of privacy, release of medical information without permission, assault and battery, discrimination, defamation, slander or libel. (Helm, 2001)

Some policies cover transportation to hearings and paid time off from work. A personal policy can fill in gaps in employment. It is unlikely that your employer's policy will cover you in situations outside your employment, such as volunteer work or giving advice to a neighbor.

Legal risk patients

Some patients present a greater risk for a malpractice lawsuit than others. I have chosen to call these *legal risk patients* in this section. By looking at information from medical malpractice lawsuits, we can come up with some general categories of patients.

Leaman and Saxton (1993) have calculated that "probably 15 percent of the patients in a practice will cause 90 percent of the litigation problems." Prather studied the records of multi-million dollar medical malpractice lawsuits in the state of Utah. "Almost without exception, they involved some kind of failure of communication — with patient, family or medical team member" (Prather, 1989).

Patients felt to be most likely to sue:

- **Are litigious.** They have sued before, have a suit pending or "talk as if they have a litigious nature."
- **Are unhappy.** These are more likely to place a blame on someone other than themselves. Depressed people have a hard time accepting misfortunes. Unhappy people experiencing financial hardships have additional incentive for finding blame.
- **Do not understand.** Those who can't follow what you're saying or doing. Barriers to understanding may be due to language, education, intelligence or a disabling condition.

- **You know personally.** With this group you may let your guard down.
- **Are very busy.** This group may not take the time to understand instructions and explanations. Both personal friends and busy people tend to have a hard time handling the hardships of unfortunate outcomes later (Leaman and Saxton, 1993).

Legal risk patients don't necessarily require a different type of treatment, but it may require that you give special attention to details. For instance, you might gloss over office procedures or the principles of a fairly straightforward diet. With legal risk patients you may be more inclined to put it in writing, or point out the item on a counseling booklet as you speak of it.

Medical liability consultant Gayle Sullivan (1998) writes, "To nip hostility in the bud, spend more, not less, time with a dissatisfied or irritated patient. Ensure, for example, that he is thoroughly familiar with his care plan and the rationale behind it."

Sullivan recommends that if a patient is being noncompliant, that you find out what the underlying reason is. In a health care facility, documenting patient complaints, attempts to resolve them and the results of each intervention can help ward off frivolous claims later. (Sullivan, 1998)

Studies suggest that patients and families turn to litigation if they believe that health professionals lack concern and warmth, lie and stonewall, fail to listen, and do not talk to them or answer questions. (Kraus, 2004)

While some individuals may pose legal risk, some situations may pose risks, as well. This is where practicing risk management can come into play. With risk management, practitioners look for situations that pose potential liability. Each facility differs, but outlining some performance criteria for given situations is helpful.

Of course, we must not overlook the fact that successful lawsuits *do* involve malpractice. The litigation risk of a patient may be high, but any case he or she brings still has to show evidence of incompetence to be successful. It is the practice, not the patient, that matters.

Liability for acts of others

Basically, the issue of legal "control" is determined by the extent to which the person hiring the work controls the details of the work.

- **Liability for acts of consultants.** Generally, if you hire an independent contractor, you are not liable for the negligence of the contractor. For example, an administrator who hires a consultant to write a set of cycle menus for your facility is not liable for the consultant's errors in calculating milligrams of sodium. This subject, however, is subject to numerous exceptions.

Contractually, the dietitian who hires an independent contractor may be liable for certain acts of the contractor. An example would be if you knowingly hired an unskilled electrician to install the wiring for a new piece of equipment and it was done improperly, causing harm to the cook using it.

In other circumstances, if you undertake to perform a certain contractual obligation, you remain contractually liable even if the obligation is subcontracted to another. For instance, when consulting with a health care facility, you hire a contractor to write a set of cycle menus for regular and therapeutic diets. If the contractor does not produce the menus soon enough to implement the menus according to your contract, you are held responsible. You could not be sued for negligence, but a lawsuit could be brought for your failure to comply with the terms of the contract.

- **Liability for acts of partners.** In a partnership, each partner is personally liable for the negligence of the others. Generally, all of the partners are bound by the acts of one. Before forming partnerships, you will want to explore the contractual issues regarding partners and corporations.

- **Liability for acts of employees.** As an employer and a dietitian, it is your responsibility to orient, train and supervise employees so that they give, within the scope of their job descriptions, the reasonable care that your customers and clients require. When employees injure someone because they have been delegated tasks beyond their abilities, the rules of vicarious (or corporate) liability attribute their negligence to the supervising

professional. An example would be a newly hired food service worker who makes and delivers “late trays” to patients without the trays being checked first by a supervisor for accuracy.

Thus, you are liable for the acts of your employees, acting within the course and scope of their employment, in a negligence lawsuit. Unpaid volunteer workers may be classified as employees as well, for the purposes of vicarious liability (*respondeat superior* doctrine).

- **Liability for acts of other disciplines.** A dietitian who is practicing as a reasonably prudent professional is not liable for the negligence of other professionals. As mentioned previously, however, a dietitian who is acting on erroneous orders may join the other professionals involved for not correcting the error. If you receive an order that you think is an error, is not complete enough, or is illegible, incompatible with previous orders, or incompatible with the patient’s needs, it is your professional duty to question the order.

With regard to malpractice liability issues, a dietitian can seek protection by purchasing adequate insurance, giving the necessary attention to legal risk individuals and understanding the liability he or she can assume for the acts of others.

Intentional torts

While professional liability is categorized as an unintentional act, another category of torts deals with intentional acts. As with all tort cases, the defendant is not subject to imprisonment — punishment is awarded by damages and monetary compensation. Unlike malpractice, however, these do not require that the four elements of harm be proved. Once the action is proven, compensation is based on a subjective judgment of how significant the infringement was on the plaintiff. Standard liability insurance policies may not cover intentional acts by the dietitian; thus, additional insurance may be necessary for protection.

There are five types of intentional torts the RD may encounter: Defamation of character; disclosure of confidential information, invasion of privacy, fraud, and assault and battery.

- **Defamation of character.** This occurs when one person discusses another in terms that diminish the other person’s reputation. The information is untrue or is harmful to the person’s reputation. The act is considered *libel* when the defamation is written and *slander* when it is oral.

The best way to avoid defaming another person’s character is to speak the truth, be able to support your statements with concrete evidence and be ready to point out that what you are stating is your opinion. With these guidelines in mind, beware of labeling health professionals as “incompetents” or “quacks.” Be cautious about supplying damaging references for employees without their previous authorization to release employment information.

When speaking before the public about food products, stick to the facts when making comparisons. Always keep sensitive information about patients to yourself.

- **Disclosure of confidential information.** The information you receive from patients is volunteered to you based on trust. You may not share this information, except in extreme cases, with others unless you have received the patient’s consent.

A patient’s personal care and concerns should be protected. Avoid giving patient information to employees or other health care providers not directly concerned with the patient. For example, I was asked to consult with a patient by a mental health counselor who would give me only the vaguest information, and not even the patient’s name, until she had permission from the patient herself. The counselor set up the first appointment by contacting the patient, and only at that point was I given her name.

To avoid problems with disclosure, discuss patients only where you will not be overheard and only when necessary. Keep notes and charts in files marked “confidential” and in a secure place. Restrict access to computers. Be cautious about discussing patients over the phone. Orient employees to procedures relating to confidentiality. Obtain written consent from patients before divulging information to insurance companies or others.

Historically, the right of patients to have personal medical information kept private has been an obligation of providers. This right was further affirmed with the passage of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requiring compliance by 2003. HIPAA requires that the release of health information for any purpose be the “minimum necessary” to accomplish the purpose. Patients must be informed through a privacy notice who will be able to see and use their medical records, what uses will require the patient’s specific authorizations, and that patients have the right to inspect, copy and amend their medical records and to obtain an accounting of disclosures (Annas, 2003).

Legal risk areas for liability are considered to be: psychiatric information, sexual behavior information (including HIV and pregnancy), and alcohol or substance abuse.

- **Invasion of privacy.** This concept relates to the “right to be left alone, and the right of a person to be free from unwarranted publicity” (*Black’s*, 1968).

Unlike defamation of character, the information disclosed is true and generally results in harming a person’s reputation or status. A patient has the right to mental and physical solitude. For example, taking pictures or involving the media requires proper authorization from the patient beforehand. Even if a patient gives you his consent to be photographed, you may not publish the photograph without additional special permission.

- **Fraud.** Bad faith is synonymous with fraud. It involves deceit, trickery, or breach of confidence that is used to gain an unfair or dishonest advantage.

On the business side of practice, this would include overcharging or billing for services that were not provided. Counseling patients on diets when there are no health indications for such would be fraudulent. By trying to cover up the negligence of another to an injured party, you may be committing deceit or fraud. Professing to be something you are not, such as an untrained person proclaiming to be a “dietitian” in states where this term is protected by legislation, is fraudulent.

- **Assault and battery.** The law protects patients from being touched or treated without their consent. Assault is the act of putting a person in fear of bodily harm. Battery is when there is actual physical contact.

Generally, plaintiffs recover monetary damages in battery cases when it is proven there was intent to malign. Physicians can be charged with battery when they perform an operation without the patient’s consent, or remove additional organs during a scheduled operation. However, malpractice or negligence are more commonly used today than the charge of battery by a physician.

Adult patients have the right to refuse treatment, and this may include a patient’s unwillingness to follow diet orders. When a patient’s actions are detrimental, this presents ethical dilemmas. Stay informed on professional responsibilities for specific situations you see in your practice area.

Competence in the practice of dietetics involves giving attention to the rights of patients and customers. By conducting your practice with honesty, integrity and fairness, you may protect yourself from the intentional torts outlined above.

The importance of good communication

As dietitians and businesspersons we should always work with our customer’s, employee’s or patient’s best interests in mind. Getting this message across in our communications with others can be one of our greatest assets. Leaman and Saxton state “True communication requires active participation, acknowledgment of understanding, and questions for clarification.” (Leaman and Saxton, 1993).

Effective communication has been a basic skill stressed in dietetic training since the beginning of the profession. Communication as a tool to avoid lawsuits was addressed in a 1975 article: “. . . good communication at various levels can help protect a dietitian... a dietitian’s personal touch may forestall suits” (Reidy, 1975).

When we communicate with others, we give or exchange information through such things as gestures, talking or writing. In attempting to evaluate yourself and your working environment for getting your message across in a positive way, consider your communication style.

As RDs, we are in a good position to be advocates for our patients. Our clients are expecting certain things in health care. McClusky (2003) has noted, “Customer satisfaction experts generally agree that customers expect accuracy, timeliness, reliability, and availability.” Look at your work environment. How well are you communicating these principles to those you serve?

- **Office environment.** A patient’s comfort and progress depend, to some extent, on your ability to offer a “healing” or “health promotion” environment. Be sensitive to confidentiality and privacy issues. Avoid talking about patients within hearing of other patients and offer a secluded setting for counseling. Allow enough time for each person. Provide adequate seating for talking with families or groups. Break down physical barriers to communication, such as counseling from behind a desk, as much as possible. Inspect your office in an attempt to see it from an outsider’s view — look at the pictures on the wall, the decor and any signs you have posted. Consider the message these would give others.

- **Body language.** We have all taken counseling classes that stress the importance of our posture and gesture in establishing rapport. Rely on these skills. Create comfort by following social conventions in greeting patients or customers and showing them due respect according to their culture. Be aware of, and try to eliminate, gestures that do not convey empathy to your patients, such as rolling your eyes or glancing at your watch.

Even your appearance can make a difference. A survey of nearly 200 Midwest RDs found that most realized that in working with patients a certain standard of dress is expected. The findings seem “to suggest that dietitians who have daily contact with clients recognize and/or accept the importance of projecting an image through their dress of competence and safety in their knowledge and practice” (Spillman, 2002). As well, Karent Stein concludes that a dietitian’s overall appearance is important in communicating nutrition messages (Stein, 2006).

Oral communication

For many of your patients, being listened to will be the most rewarding response they receive. Active listening goes a long way in showing that a dietitian has a caring attitude. Again, counseling skills will help to protect you from being misunderstood. Allow extra time with new patients to establish rapport and give the patient an opportunity to convey his needs. Keep the patient involved in the sessions, tailoring the information to her understanding and agenda as much as possible. In dealing with patients of different cultures, it is helpful to consider differing values about health and illness.

The telephone is a great tool for communicating, but let’s face it, we’ve all been misunderstood over the phone. When using the telephone for communicating it’s hard to assess the attention, understanding or opinion of the other party. Sometimes our communication comes in the form of a message from an answering machine or service and we may not receive an accurate message. We may not place the same importance on a phone call as we do on meetings in person. So, for a number of reasons, the telephone may present some liabilities.

Developing telephone procedures that document calls and consistently adhering to these will improve communication via this method. A telephone log should be kept for every time you are speaking with patients or customers. Telephone logs require the same treatment as patient records: they should be kept in a secure place and for as long as you would the patient records to which they refer. Some notes about telephone logs are listed in the chart on the next page.

You may put the other party at ease with proper phone etiquette. As much as possible, answer the phone promptly, identifying yourself and apologizing if the person has had to wait. Listen with interest, using the person’s name. Try to convey your friendliness and responsiveness in the course of the conversation. If you use a speaker phone, inform your caller of this fact and ask permission to use it.

If you rely on an answering machine, use a device that accommodates your needs. Some machines or services will allow you to retrieve your messages through a phone call, and this may be helpful.

Many machines will record the date and time the message was left, allowing for better documentation. In the event you rely on one, it is wise to let patients know that you use an answering machine when you’re not

available or when the office is closed. If it is necessary for your practice, let patients know how they may reach you in an emergency. If you have someone answering your phone for you, invest in a telephone log book where they may record your incoming messages. This allows you to review your messages at a later time if necessary.

Tips for an outgoing message include:

- Identify yourself and your business name.
- State your office hours.
- State when caller may try again if office is closed.
- State when they may expect you to return the call.
- Ask caller to include: name, phone number, reason for call, best time for return call.
- Procedure for reaching you in an emergency.
- Referral to standby or emergency backup.

Telephone Log Documentation

The telephone log should include:

- Date and time of call
- Patient or customer name

If returning a call, date and time of patient's call

- Nature of concern, purpose of call
- Your suggested intervention, referral, and plans to follow up
- Patient or customer stated intent to comply
- Signature (or, at least, initials) of person documenting the conversation

If someone other than yourself retrieves your messages, orient and train the person regarding confidentiality. When answering messages, answer them as promptly as possible. If you make unsuccessful attempts to reach a person, make a note of the dates and times.

If you have given a patient some diet instructions over the phone, or if you have discussed a follow-up plan (making an appointment, calling back if they need more help), document this, along with the required information listed above, and keep this in the patient's records. Failure to document out-of-office phone calls has been known to work against health professionals later (Karp, 1991).

The best way to avoid misunderstanding of verbal conversations is to send a letter to the patient documenting your understanding of the conversation. If specific diet instructions were given to the patient, these should be included in the letter and a copy should be placed in the patient's file.

What about outgoing calls when you reach a patient's answering machine? Leave only your name and ask for a call back. As others may have access to your message, avoid discussing clinical data, advice or results.

And, what about cellular phones? Some security issues arise if you are giving patient information using a cell phone. There is a risk of inappropriate eavesdropping. As well, some phone models have features for message storage and retrieval that could be accessed by outsiders.

Facsimiles

Fax machines have dramatically changed the way we exchange documents and other information. Fax machines are useful for sending such documents as order forms, invoices, price schedules, price quotations, diagrams, tables and data of all kinds. However, when time is not an issue, regular mail or a messenger service are better alternatives to faxes, legally speaking. Most faxes should be accompanied by a cover sheet. The sheet should include

- the name of the authorized recipient, position and phone number;
- your name, fax number, phone number;
- the number of pages being transmitted.

Some other fax tips:

- Number the pages you're sending. This will make it easier for the recipient to make sure all of the pages have been received. When receiving a fax, check for missing or unreadable pages.
- When the information is personal or confidential, you must use judgment, since most fax machines are shared. If you're concerned, call the recipient first. Verify the recipient's fax number by checking the digital display on the machine. A notation of "CONFIDENTIAL" on the cover sheet indicates that only those authorized may view the material; if you label it as "PERSONAL," it should be read only by the addressee.

When faxing medical record information, proper patient authorization should be obtained first. The original fax sheets should be filed into the patient's record.

You may occasionally receive a misrouted fax. This should be treated as you would misdirected mail, with confidentiality. Try to contact the sender if possible, to determine how the documents should be handled, or return the material to the sender.

Written documentation

There is something formal about having information in writing. It seems to make the information more credible and more important. If you have to explain something to a jury or regulatory agency, it is recognized that documents carry a lot of weight in supporting what you are saying. This section will cover some documents that may help to reduce your risks as well as guidelines for working with specific newer methods of communication.

It is worth mentioning that the documentation of health information about individuals is among the most sensitive type of personal information.

Electronic communication can augment any practice setting. Michalczyk (2002) said "To communicate effectively today, dietetics professionals need to embrace "virtual mediums" such as e-mail or the Internet, along with new technologies that can save time, maximize resources, and increase efficiency." As many written documents are generated on the computer, it is important to have a good system in place for protecting your computers. This means running standard programs that keep the hard drive in good shape, backing up files, utilizing antivirus software and planning ahead for power outages.

Electronic mail

Electronic mail (e-mail) can be a good way to communicate if you are aware that it does have limitations. Adhering to a few guidelines will help you successfully communicate to others:

- Try to maintain the same level of formality as you would in paper correspondence. Strive for clarity and brevity. Without facial expressions and vocal inflections, an attempt at humor, sarcasm or cleverness may come across as criticism, anger or reprimand. Avoid colloquialisms when working with a cross-

cultural situation. Avoid e-mail as a medium for conflict resolution.

- Be careful and professional regarding what you write about others. E-mail is subject to interception, misrouting, and review by others. In fact, in the workplace, e-mail is the property of the employer.
- Consider your reader and how they might react to what you have written. Do not send e-mail in anger. Avoid the urge to “fire off” a reply to a message that causes strong emotions.
- Be aware that not everyone agrees the use of acronyms and symbols are appropriate. Even something as simple as sending messages in uppercase may look like you’re SHOUTING.
- Use complete sentences and a spell-checker. Double-check the address when you compose a message or reply to a message you’ve received. Re-read each message carefully before you send it. Misspelled or omitted words indicate a lack of attention to detail.
- Don’t assume that e-mail is private. It’s easy to forward e-mail, so the message you send could be shared with others. Avoid including personal or confidential material.
- Make sure the subject or title of the message is appropriate for the message’s content. Keep the subject clear and specific. Make your message as short as possible. Focus on one subject in the message.
- Sign your email. Include: your name, position, organization, phone number and e-mail address.
- Acknowledge receipt of your messages promptly. If you are going to be out of the office, use auto-response messages.

E-mail as an electronic tool can be very effective in delivering health care information between a provider and patient. Unfortunately, it increases the opportunity for invasion of privacy. In addressing patient-physician privacy, the American Medical Informatics Association has developed guidelines regarding privacy issues for using e-mail. Nutrition professionals could consider these guidelines as well, which include:

- obtain patient informed consent before using e-mail for direct correspondence;
- explain and use security mechanisms;
- prohibit the forwarding of patient e-mails without express authorization;
- inform patients about those having access to their messages and whether their messages will become part of their medical records;
- respond to messages responsibly; and
- avoid references to third parties (Kane, 1998).

A Boston physician who encourages his patients to use electronic communication, Dr. Daniel Sands, shared his patient guidelines for sending e-mail to him (published in *Health Progress* magazine (Lawry, 2000):

E-mail guidelines	
<ul style="list-style-type: none"> • Use alternative forms of means of communication (instead of e-mail) for: <ul style="list-style-type: none"> Emergencies and other time-sensitive issues. Sensitive information. (Do not assume e-mail is confidential.) Situations in which my response is delayed. (I may be away.) • Be concise <ul style="list-style-type: none"> • Put your name and identification number in the subject line. • Keep copies of e-mail you receive. • I may save e-mail I send and receive in your record. • I may share your messages with my office staff or with consultants (if necessary.) 	

Should you receive e-mail messages from patients, they should be printed, initialed by the responsible person, and placed in the record. However, continue to remind patients that they should feel free to call you and have you answer their question directly. As well, it may be wise to follow-up e-mail queries with a phone call.

Web-based Care

The use of the internet for delivering care has the potential for growing dramatically over the coming years. The three main benefits of telemedicine on medicine and healthcare delivery are:

- It provides benefits to various groups.
- It allows more access to healthcare.
- It improves healthcare quality (Ashley, 2002).

The challenges for web care “. . .will be to resolve all of the relevant issues in a way that creates the best and most convenient care for patients while paying providers fairly for their time and expertise” (Halvorson, 2003). The Risk Management Foundation (2004) presents some of the specific problems that will need to be addressed by providers of web care:

- the possibility that a clinician patient relationship is unintentionally established by such an encounter;
- licensing and regulation of physicians (and other health care providers) who practice across state lines;
- application of state laws when the clinician and patient are in different states;
- confidentiality and integrity of electronically transmitted patient information;
- creation, maintenance, archiving, and ownership of the records of an Internet consultation;
- potential violations of self referral statutes where physicians are investors in Internet projects; and
- contingency plans to handle the potential for equipment or service problems that may adversely impact the transmission of information.

Nutrition communication consultant Christine Palumbo writes, “In states with licensure, your general liability insurance should cover you if you are doing Internet counseling with someone within your state. If you deal with a client in another state, and there is reciprocity between states, the same should hold true. To my knowledge, to date there has been no litigation yet to challenge that assumption. However, it’s best to check with your insurance carrier for details on your own policy” (Palumbo, 1999).

Many dietitians have their own Web page. If you’re offering general information, there’s probably little liability risk. But, anything that is published can be freely used or applied.

When a dietitian begins to answer questions about a person’s condition, the risk increases. Self-monitoring of your responses before they are submitted with the following questions can help: Can I justify this response based on identifiable, safe, and timely practice guidelines? What have I done to demonstrate beneficence and an effort to protect the inquirer? (Rodriguez, 1999) Websites will often have disclaimers. For protection an RD could offer this notice:

The advice provided on this Web site is intended to be general in nature and should not be relied upon for specific treatment. If you need personal medical attention, please contact your medical provider or a registered dietitian in your area.

Electronic Medical Records (EMR)

Computerized communication tools have the potential to make practice much more current, helping practitioners keep up with best practices. EMR can also take splintered medical records and consolidate them while making them more available.

As you get familiar with this new recording system, you will want to carefully review each screen and its selections before adding your data. Verifying that you’ve accessed the correct patient’s record before making

additions is, of course, your greatest concern. In some programs, you're only one keystroke away from submitting or saving your entry. Be sure to follow the proper procedures to correct mistakes or make a late entry.

Security can be compromised with electronic systems unless employees are scrupulous about keeping passwords secret and logging off computers after each session. Computer terminals should be positioned so that screen information and strokes are not easily compromised.

The Risk Management Foundation (2004) maintains that all staff members take responsibility for patient confidentiality and protection with electronic communication of medical records. Guidelines for electronic records are:

- All patient information is sensitive;
- patient needs protection;
- Access patient information on a need-to-know basis only; and
- Systematic tracking of every entry, look-up, and printing of patient information using unique and confidential signature computer keys (or passwords) is the best safeguard. Ideally, patients should be able to find out who accessed their record and why.

Good communication reaps many benefits. Through good communication, you provide a caring environment, allowing patients and customers to put their trust in you. Complete documentation improves your ability to recall details and to monitor a patient's or project's progress. Patients and customers are made aware of your services and your expectations, reducing the likelihood of misunderstandings. Ultimately, good communication makes your job easier while reducing your risks.

Patient information brochure

Many dietitians now have customer information brochures that assist people in answering questions about their business or services. Brochures may be distributed to health professionals and facilities that refer your services, included in project proposals for your services, and given to customers and clients. A brochure should include:

- Description and credentials of professional staff;
- Type of services provided;
- Specialties in practicing dietetics;
- Appointment procedure;
- Office hours; and
- System for fees, billing and collection

Instructional materials

Pre-printed materials can allow you to give consistent, precise information to your customers or patients. For example, if you provide weight management patients with a copy of your pamphlet on breaking behavior chains, it is easy to show others (perhaps plaintiff's attorneys) the information the patient received.

Of course, I am not implying that simply giving a patient a copy of written materials without going over it or checking back later for understanding is reasonable care. But, documenting in your notes that the "patient received a copy of *Breaking Behavior Chains* pamphlet and verbalized understanding of guidelines for identifying behavior chains," can go far in describing the specific care the patient received. And, later noting that the "patient returned the *Behavior Chain Checklist*," and enclosing a copy in the record demonstrates to others that the subject was covered in counseling.

Using materials produced by reputable professionals and organizations may help defend your methods. When you write your own materials, be sure to support the information with reference materials.

Patient records

Written documentation can be the best evidence at a later time about the care that a patient received. It should be factual and timely. There are some basic elements to consider in writing documents that will protect the professional later. Bowers and Adams (1999) offer these tips for writing documents:

- accurate documentation — the sooner it is recorded after the event, the more accurate it is;
- factual documentation — state facts by using objective terms;
- complete documentation — use industry standards of practice as a guide;
- abbreviations — use only those that conform to a generally accepted list;
- unsolved mysteries — fill in gaps in service caused by missed visits or hospitalizations;
- criticism — this should be avoided in the record;
- corrections and late entries — follow acceptable procedures for correcting or adding to the chart later;
- confidentiality — note special directions by the patient related to release of medical information; and
- coordination of care — this reflects all attempts to coordinate care.

When deciding what to record in a patient's records from the liability angle, consider what you would want to know later if the patient's care was questioned. You will want to be able to reconstruct the patient's care and show that the care provided was reasonable, given the circumstances. It will be helpful to keep the notes complete, clear and concise. Kroll (2003) advises:

- All appropriate blanks must be filled in or boxes checked.
- Accurately describe all unusual occurrences.
- Any threats and complaints must be documented in a non-judgmental, neutral manner.
- Patient and family concerns must be documented, and follow-up related to those concerns is paramount.
- Avoid using defensive, argumentative, blaming and vague language.
- If another person's entry requires action or follow-up, do it and document the response.
- Use legible penmanship.
- Avoid implying the patient's complaints are groundless.
- Avoid revealing frustration with the patient.
- Statements that may have legal significance, but which have no direct bearing on the care of the patient should not be written in the record.
- Risk-prevention activity, such as completion of an incident report, notification of insurance claims personnel, risk management, or contact with an attorney, should not be in the record. This may inadvertently disclose information.
- Medical mishaps should be documented concisely.
- Legal threats and complaints about the quality of care may be briefly documented in the patient's record in a non-judgmental, neutral manner.
- Do not write, "Patient dissatisfied and threatening to sue." Instead write, "Patient expressing dissatisfaction with care and threatening to sue. The following measures were undertaken in response."
- Do not understate the patient's condition.
- Always document the worries or concerns expressed by the patient or family. Then document your actions to calm their fears.
- Document in the record sources of information if other than the patient, such as wife or child.
- Always document evidence of patient noncompliance.
- Avoid direct disagreement with any other health professional in the record.
- If another professional does not respond, document that the person was notified, the information relayed, and the time of such notification.
- If you are using a standard pre-printed form for documentation, avoid leaving blank spaces. If an area of the form is irrelevant, document "not applicable."

It is recommended that you document the factors that you considered in reaching a diet management conclusion (Cross, 1988). Note any missed or canceled appointments and the reason, if known. Make sure each page in the record identifies the patient's name and record number (such as the Social Security number).

Notes should be in a format you can read and refer to if you had to defend the care the patient received. Write legibly and use standard abbreviations. Patient noncompliance is as important as compliance, so make notes of each. There is no place in medical charts for flippant comments or jokes. Most of us have known competent professionals that have used these methods, with poor consequences (Mangels, 1990).

Especially in the hospital setting, there will be many reviewers who have access to your patient "progress notes." The audits are generally conducted with quality assurance and cost-containment issues in mind. Write your notes for completeness for reviewers working in the following positions: quality assurance professionals, utilization managers, discharge planners, auditors, and risk managers.

In addition to the specific written documents mentioned already, you may want to have records of other information the patient received. Keep records or photocopies of a patient's receipt of items, including informed consent forms, follow-up letters (especially to those patients you feel were too busy or did not understand you at the time of the office visit), letters for unpaid bills, and notices of test or procedure results. Document communication you had with other health professionals or laboratories. If the patient was referred by a physician, any correspondence you had with the doctor communicating the care provided, even if it is expressing appreciation for the referral, should be copied and placed in the patient's files.

How long should you keep records? This depends on your state's statute of limitations setting the period after which claims for damages cannot be brought to court. Typically, states require that the medical records of minors be held longer than those for adult patients. For practical reasons, however, it is wise to retain records even longer than required (Cross, 1995). When disposing of records, shredding or burning is recommended.

Employment and supervision

As a manager of employees, your risks increase. You not only have your customers to be concerned with, but those that work under you as well. You may protect yourself as a professional through proper hiring practices, documentation and delegation of authority. These are briefly described here.

The hiring process is affected by a number of statutes and regulations, too many to cover in the scope of this study. Before you take on any new venture, your assessment should include the employment issues that the venture will bring. Supervisors and employers should be aware of statutes, regulations and issues that affect age protection, disabilities, civil rights, pregnancy and leave of absence, labor relations, affirmative action and equal opportunity, equal pay and comparable worth, immigration, drug and alcohol testing, trade secrets, access to employee records, and even smoking in the workplace (Warner, 1989).

Documentation is just as important in supervision as in practicing clinical dietetics. In management, one way of thinking about protecting yourself is to document what you do, do what you document, and do a quality job. Consistency in following policies and procedures should be a priority. The continuous process of orienting, training, and evaluating your employees is also important. Keep on top of the latest management issues, regulations and statutes through an aggressive continuing education program. Your ability to document such accomplishments may prove helpful.

A former manager for Xerox recommends storing employment documents carefully. He advises keeping applications, interview notes, pre-employment evaluations, physical examinations, and the advertisement used to recruit the applicant for the full term of a person's employment plus an additional three to five years after he or she leaves (Outlaw, 1998).

Delegation of authority presents some liability issues. Some tasks may be assigned readily, such as billing and patient accounts, and activities that do not relate to patient care. Some tasks may be assigned, but only to a limited type of person. These tasks require certain skill and training. An example is a diet technician who can "check" a menu for a patient with a moderate sodium restriction.

Certain tasks may not be assigned. These are tasks reserved solely for dietitians. State law and tradition generally determine activities that cannot be delegated. These might include counseling patients on therapeutic diets or calculating nutrient requirements. For the times when you are delegating authority, it is wise to have written protocols, so that employees do not have to use personal judgment in place of a dietitian's judgment.

Choose your employees carefully. Train employees well or hire experienced personnel. *Oxford's Official Professional Guide* (2003) outlines some business ethics that each employee should comply with:

- Keep confidential the employer's business matters and information regarding customers and clients;
- Avoid slandering or damaging the reputation of another or engage in unfair competition with others;
- Acknowledge a colleague's accomplishments and do not claim them for yourself;
- Take responsibility or blame for your own mistakes and do not pass the blame to another;
- Do not use telephones, copiers, and computers for personal matters without permission;
- Note that personal e-mails via company equipment are not private or protected by the First Amendment;
- Do not take business supplies for personal use;
- Do not leave private or confidential materials on your desk or other unsecured areas;
- Lock or secure desk drawers, filing cabinets, computers, storage areas and offices overnight;
- Ensure that confidential documents are disposed of properly and in accordance with state and federal regulations on burning and shredding; and
- Observe copyrights when reproducing paper or electronic documents.

Patient counseling issues

As health professionals, our patients have the right to be listened to, cared about and respected. Terry has challenged us to “engage, empathize, educate and enlist patients in their own health care.” (Terry, 1994). In doing so it raises some patient counseling issues. The issues I want to address here are proper conduct in counseling, referring patients to other health care professionals or services, and termination of the dietitian-patient relationship.

The “prudent” dietitian is expected to follow ethical standards. This involves professional conduct in working with patients. Such practices protect the patient's best interests as well as the dietitian's. Work toward providing a comfortable, caring environment described earlier. Avoid making your patient uncomfortable through use of inappropriate physical contact, suggestive or offensive gestures or comments, or off-color jokes. The patient is coming to see a professional so your attire, speech, manner, and personal hygiene should reflect your status as a health professional. Avoid discriminating against patients on the basis of race, creed, religion, sex, age or national origin (unless the scope of your practice naturally eliminates certain groups).

Keep in mind that a counseling role gives you certain responsibilities. As long as the patient is under your care you have a responsibility that includes treating the patient with dignity, instructing the patient (and family) and keeping the patient informed as necessary. Be available, involve your patient in decision making, communicate with other health professionals, refer the patient to others for the patient's interest, keep abreast of new developments in your field, develop reasonable expectations for the patient, and document carefully. In most states, parental consent is required when you are working with a person under 18 years of age.

Unfortunately, even under the best conditions a customer may be offended or angry. Having to apologize to a client is one of the most important communications of being in practice. You will want to call the client or write a letter as soon as it comes to your attention. Offer a full apology. If the incident involves an employee, ensure the client that the behavior is not standard practice for your employees. Indicate that you are looking into the incident and plan to take action.

The problem patient

There will be times when you will not be able to keep the patient's best interests in mind — for example, the classic “difficult” patient, whom you feel you may no longer treat equitably. For whatever reason, some patients will be more challenging for you to assist than others. When you work with a difficult patient, you are exposing yourself to trouble and the patient to substandard care (Leaman and Saxton, 1993). Therefore, when relations get too strained, it is time for the patient to find another dietitian.

The courts have upheld the right of physicians to terminate care of a patient who behaves in a manner that is offensive or dangerous, fails to pay bills, fails to keep appointments, or refuses to follow recommended care (Torres, 1994). Dietitians, as health care professionals, might expect these conditions to prevail in their practice. Any noncompliance should be documented in the patient's chart.

Noncompliant patients often fit into this category of difficult patients. To give the patient the benefit of the doubt, be sure you make the effort to explain the medical and dietetic rationales clearly, allow for extra time for dialogue, work at making the patient comfortable during your time together, and use active listening skills in order to get to emotional issues that may be involved. Document objectively and thoroughly all evidence of noncompliance and efforts to correct the situation.

In charting a patient care plan, refer to your recommendations and rationale for medical nutrition therapy. Document that the patient has been informed of the specific potential consequences of failing to follow medical advice.

When terminating relations with a patient, handle the situation carefully. It is important that the patient understand that you are doing this in his or her best interests, not yours. Explain that you don't believe a “productive” dietitian-patient relationship can be continued. Try to end the relationship without ill feelings. If appropriate, suggest that the person might benefit from seeing another dietitian, someone with methods and views that would more closely align with the patient's.

In order that you are not held responsible for care another dietitian will provide, give patients the names of several dietitians in the area, but also advise them that they may find a dietitian by calling professional associations, managed care plans, local hospitals, or even by checking the Yellow Pages. Termination of service to a patient with whom you have already had communication problems can be difficult. There may be emotional reactions from the patient, making information hard to convey effectively.

After you terminate the relationship with a patient, it is recommended that you follow up the conversation with a letter sent by certified mail offering your continued services in emergencies, say for 60 days, until the person can find another dietitian. Offer to send a summary of your patient records to the new dietitian, if the patient authorizes and requests this.

Referrals

Termination issues aside, it is rare that one dietitian will meet the needs of all patients requiring dietetic services. In the case where you see a patient who either falls outside your level of expertise or you do not have the necessary resources or facilities, you have a duty to refer the patient to another dietitian.

With a referral, you shift all or part of the responsibility of care, depending on the circumstances, to the other professional. When referring to others, it is suggested that you assess if the proposed professional is willing to accept the patient and is qualified to meet the patient's needs. If you contact other professionals for an informal consultation, be careful not to disclose the identity of the patient without the permission of the patient.

In some cases, you will want to refer patients to other health care providers. There will be varying degrees of urgency in your referral. Obviously, if you feel the patient's health is in great danger if the matter does not get attention, your approach will reflect this urgency. In other cases, the patient's health might be enhanced if they saw another health professional. Two hypothetical examples follow.

In the first case, a patient came to me who gave a history of taking megadoses of supplements for an extended period. She was exhibiting symptoms that could be related to chronic supplement use. She wanted me to give her a “detoxifying diet.” I explained that I felt she needed to be evaluated by a physician, that this was not something I felt comfortable handling without a diagnosis. We discussed whom she would like to see as a physician regarding this problem. I allowed her to use the phone at the office and she made an appointment before she left that day. I felt considerable urgency to get her in for medical evaluation.

A second case is a person I counseled for weight management. She displayed signs of mild depression and verbalized that she didn’t really have anyone to talk with about recent family problems that she felt contributed to her weight gain. I was counseling her at her work site and knew the company had an Employee Assistance Program (EAP) that provided psychological counseling (short- or long-term, as needed). I suggested she contact the EAP office and arrange for a counseling session. I followed up on this referral at our next appointment. Both referrals were documented in the patient’s record.

Referrals require judgment on the dietitian’s part. Your conduct in handling counseling situations and the termination of a relationship also depend on your professional judgment. You may protect your professional role by the way you handle these.

Communicating with your referral source

Whenever you get a referral from another health professional, you should follow up your visit with the client by sending the referral source written documentation. This establishes two-way communication and gives you an opportunity to acknowledge your appreciation for the referral. It ensures that the patient gets consistent information, that the patient receives support in achieving the recommendations you formulated with the patient, and gives the professional an indication of how physician’s orders will be carried out.

Make sure you have the patient’s authorization to release pertinent records from another health care provider before sending these on.

Areas to be addressed in your communication with the referral source are: short- and long-term goals; the nutrition prescription; food/meal planning; education topics covered; patient acceptance and understanding; anticipated compliance; successful behavioral changes; additional skills or information needed; additional recommendations; and plans for ongoing care (Monk, 1995).

Kuppersmith and Wheeler (2002) note that a major role of dietitians is to “provide patients with goal-oriented nutrition treatment plans that should be communicated precisely to referring physicians. Care plans should contain information potentially relevant to behavior change and reimbursement.”

Conclusion

Practicing dietetics offers many opportunities to help others — as employees, customers or patients. In providing a service we are exposing ourselves to the risk that we may harm another or treat them unfairly. Strategies for protecting against risks include good communication, documentation and awareness. With attention to these approaches, dietitians are more likely to defuse legal risk situations amicably.

Review Questions

1. I have worked as a consultant in several nursing homes over the past 5 years. I now plan to return to the hospital setting where my employer will cover professional liability insurance. Do I need to continue my personal liability coverage now that I’m not consulting?

Answer: That depends. You could be involved in a lawsuit until the statute of limitations runs out on your work from the previous 5 years. If you have a “claims made” policy, you will not be covered by the policy of the previous years. Your insurance agent and your lawyer can help you determine if you need additional coverage.

2. I have just recently been appointed to my state's licensure board for dietitians. Will my professional liability insurance cover my work as a board member?

Answer: It depends. Your policy may only cover you for the conditions you specified at the time of application. Check with your insurance agent.

3. I've been told that my handwriting is illegible; however, I have no problem reading what I write. As long as I am the only one referring to the patient records in my private practice, there couldn't be any problem. Right?

Answer: No. The records aren't exclusively yours. The information belongs to the patient and may be needed by others — e.g., health care professionals, government agencies, and insurers. As well, plaintiff's attorneys look at records before deciding whether or not to file a suit. You wouldn't want your illegible records to strengthen his case.

References

- Ashley RC. Telemedicine: legal, ethical, and liability considerations. *JADA*, 102:2, 267-269, 2002.
- American Dietetic Association (Performance, Proficiency, and Value Tactical Workgroup of the ADA House of Delegates). Performance, proficiency and value of the dietetics professional. *JADA* 102:9, 1304-1315, 2002.
- Annas GJ. HIPAA regulations: a new era of medical-record privacy? *NEJM* 348:15, 1486-1490, 2003.
- Black's Law Dictionary*. West Publishing Co, St. Paul, MN, 1968.
- Bowers G, Adams J. Documentation on trial: nine ways to protect your agency. *Caring*, 18:6,12-15, 1999.
- Brooke PS. Shopping for liability insurance. *Amer J of Nursing*, 17-172, Feb 1989.
- Croke EM. Nurses, negligence and malpractice. *Amer J Nursing*, 103:9, 54-63, 2003.
- Cross AT. Legal requirement of private practice medical records. *JADA*, 88:10, 1272-1274, 1988.
- Cross AT. Practical and legal considerations of private nutrition practice. *JADA*, 95:1, 21-29, 1995.
- Halvorson GC, Isham GJ. *Epidemic of Care*. Jossey-Bass, San Francisco, 2003.
- Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, 104th Congress, August 21, 1996.
- Helm A, Kihm NC. Is professional liability insurance for you? *Nursing*, 31:1, 48-49, 2001.
- Kane B, Sands DZ. Guidelines for the clinical use of electronic mail as a medium for patient-physician communication. *J Amer Informatics Assoc*. 5;104-111, 1998.
- Karp D. Myths that make you a malpractice lightning rod. *Medical Economics*, 68:19, 147-152, 1991.
- Kroll M. What were you thinking? Charting rules to keep you legally safe. *J GerontoNurs*, 29:3,15-16, 2003.
- Kuppersmith NC, Wheeler SF. Communication between family physicians and registered dietitians in the outpatient setting. *JADA*, 102:12, 1756-1763, 2002.
- Kraus K, Cameron ME. Legal and ethical issues: communication and malpractice lawsuits. *J Prof Nurs*, 20:1, 3-4, 2004.
- Lawry TC. Putting the physician-patient relationship online. *Health Progress*, 81:4, 12,16, 2000.
- Leaman TL, Saxton JW. Recognizing risks, and New solutions: co-active practice, in *Preventing Malpractice: the Co-active Solution*. Plenum Publishing Corp, New York, 1993.
- Mangels L. Chart notes from a malpractice insurer's hell. *Medical Economics*, 67:22, 120, 1990.
- McClusky KW. Customer service in health care- dietetics professionals can take the lead. *JADA* 103:10, 1282, 2003.
- Michalczyk, D. Impact your practice: communicate effectively online. *JADA*, 102:6, 778-779, 2002.
- Monk A, et al. Practice guidelines for medical nutrition therapy provided by dietitians for persons with non-insulin dependent diabetes mellitus. *JADA*, 95:9, 999-1006, 1995.
- Moreland K, et al. Development and implementation of the Clinical Privileges for Dietitian Nutrition Order Writing program at a long-term acute-care hospital. *JADA*, 102:1, 72-81, 2002.
- Office Professional's Guide*. Oxford University Press, New York, 2003, pp. 34-35.
- Outlaw W. *Smart Staffing: How to hire, reward, and keep top employees for your growing company*. Upstart Publishing, Chicago, 1998.

- Palumbo C. Using new technology for nutrition counseling. *JADA*, 99:11, 1363-1364, 1999.
- Prather SE. The choice is yours—communicate or be sued. *Medical Economics*, 66:8, 90-102, 1989.
- Pritchett E. The impact of gaining provider status in the Medicare program. *JADA*, 102:4, 480-482, 2002.
- Reidy EG, Reidy DE. Malpractice law and the dietitian. *JADA*, 67:335-338, 1975.
- Risk Management Foundation. *Frequently Asked Questions*. Risk Management Foundation, 2004. http://www.rmhf.harvard.edu/FAQs_home/category_all.asp. (Accessed 8/13/04)
- Rodriguez JC. Legal, ethical, and professional issues to consider when communicating via the Internet: a suggested response model and policy. *JADA*, 99:11,1428-1432, 1999.
- Silver HJ, Wellman NS. Nutrition diagnosing and order writing: value for practitioners, quality for clients. *JADA*, 103:11, 1470-1472.
- Spillman DM, Do dietetics professionals need to be concerned with dress on the job? *JADA*, 102:3, 345-346, 2002.
- Stein K. Good or bad: What you see isn't what you get. *JADA*, 106:7, 1022-1024, 2006.
- Sullivan GH. How to deal with an angry patient. *RN*, 61:10, 63-64, 1998.
- Terry K. Telling patients more will save you time. *Medical Economics*, 71:14, 40-52, 1994.
- Torres A, Wagner R, Proper S. Terminating the physician-patient relationship. *J Dermatol Surg Oncol*, 20:2, 144-147, 1994.
- Warner S, Dees RO. The hiring process: more than just a resume. *Supervisory Management*, 34:9, 29-34, 1989.

Examination for SPR07

1. An occurrence insurance policy for liability provides coverage based on the date of the occurrence leading to a lawsuit.
 - a) True
 - b) False

2. If a dietitian expands her practice to counseling patients as a personal fitness trainer, she can be assured that the professional liability insurance sponsored by the American Dietetic Association will cover her new duties as well.
 - a) True
 - b) False

3. The patient's perception of the level of care he or she received is largely determined by:
 - a) the professional's ability to communicate well with the patient
 - b) whether or not insurance covered the entire bill
 - c) whether or not the patient recovered fully or was cured
 - d) how his or her friends were treated at the same facility
 - e) all of the above

4. A dietitian is generally held responsible for
 - a) the work of everyone in the dietary department
 - b) the work of her and her own employees
 - c) only that work that she performed by herself
 - d) anything that involves nutrition
 - e) only work that corresponds to ADA Standards of Practice

5. Adult patients have the right to refuse treatment by a dietitian.
 - a) True
 - b) False
6. A dietitian's body language is very important in conveying a caring attitude toward patients.
 - a) True
 - b) False
7. Which of the following should NOT be part of the patient's records.
 - a) records of phone conversations
 - b) consultations with other practitioners
 - c) casual conversations with the patient's friends
 - d) e-mails from/to the patient
 - e) diet history
8. It is legal for an employer to have access to e-mail generated on the company network.
 - a) True
 - b) False
9. Fax transmissions should be used when
 - a) sensitive personal information is included
 - b) the dietitian is too busy to mail a letter
 - c) the patient does not have e-mail
 - d) cover sheets are used to keep others from viewing personal information.
 - e) all of the above
10. As long as a person is a Registered Dietitian with the Commission for Dietetic Registration, there are no licensing violations when offering nutrition advice to patients in other states over the Internet.
 - a) True
 - b) False
11. When using electronic medical records, the best way to correct errors is by deleting the erroneous information and entering new data at a later point.
 - a) True
 - b) False
12. An incident report filed with the risk management department of a hospital must be attached to the patient's medical record as well.
 - a) True
 - b) False

13. Which is the best way to dispose of records of deceased patients?
- shredding and burning
 - storing in "dead" storage
 - normal garbage pickup
 - deceased patient's records legally may not be destroyed
 - send them to the Dead Records Office of the National Health Statistics Bureau
14. The "conditions" section of a liability insurance policy generally includes:
- the upper limits the insurer will pay per incident
 - what acts are not covered
 - the definition of "dietitian"
 - the insured's specific duties in the event of an incident
 - the medical conditions most likely to occur
15. Malpractice insurance will cover a professional for which claim?
- negligence
 - assault
 - slander
 - harassment
 - failure to renew license
16. Which of the following tasks cannot be delegated to an employee who does not have RD status?
- forwarding standard diet materials to a patient
 - billing patients
 - counseling patient on a therapeutic diet
 - transcribing diet orders
 - gathering nutrition assessment data
17. If a dietitian criticizes without substantiation a popular author of weight-loss books during a radio interview, she could be accused of committing what tort?
- assault
 - slander
 - libel
 - battery
 - defamation of character

18. HIPAA was enacted in 1996 to protect patients from:
- a) breaches of confidentiality
 - b) being denied access to free or reduced health care
 - c) medical errors
 - d) being "dropped" by a health provider for failure to comply
 - e) being confused with another patient of similar name
19. Billing Medicare for patient services that were not provided is an example of:
- a) libel
 - b) negligence
 - c) malpractice
 - d) fraud
 - e) malfeasance
20. One of the biggest drawbacks to using e-mail for patient communication is:
- a) timeliness
 - b) few patients have access
 - c) potential for invasion of privacy
 - d) potential for importing computer viruses
 - e) your e-mail address is captured by "spammers"
21. The following is NOT appropriate to include in a patient's record:
- a) threats a patient is making toward his psychologist
 - b) a dietitian's feelings about the patient's noncompliance
 - c) a wife's concerns about the patient's response to treatment
 - d) a dietitian's referral to an eating disorder specialist
 - e) information about the patient's food preferences
22. When terminating relations with a difficult patient:
- a) have a third party call the patient and tell him you can't see him again
 - b) send the patient's records to a colleague with instructions for contacting the patient
 - c) send the patient your recommendation for another dietitian
 - d) discuss the situation and your plans with the patient, then follow it up with a letter
 - e) stop returning the patient's calls



Continuing Education credit

is available for this module for the following professions:

Registered Dietitians/Dietetic Technicians: 3 CPEUs

Certified Dietary Managers: 3 Clock Hours

To earn credit, you must complete the examination on the preceding pages, by purchasing access to our Interactive OnLine Testing System at:

<http://www.nutritiondimension.com/>

Begin by writing down your answer choices, then visit our website:

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Click on: Order number for this module: [SPR07](#)

You will be prompted to submit personal and professional certification information, your credit card number and the Order number for this module. You will then gain an access code to complete the exam for this module.

If you have not used our online testing system before, we recommend that you review the process first by clicking on [Interactive OnLine Testing](#), and that you schedule your first testing session during our office hours (M-F, 7:30 am - 4:30 pm, PT), so that you can call for assistance while on-line, if necessary.

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