

Guido, *Legal and Ethical Issues in Nursing*, 6e

Chapter 02

Question 1

Type: MCMA

A lawsuit has been filed against the hospital for terminating an employee for excessive tardiness and absenteeism. The defendant's attorney has contacted nurses who worked with this employee to testify in the case. Which statements would best support the defendant's case?

Note: Credit will be given only if all correct choices and no incorrect choices are selected.

Standard Text: Select all that apply.

1. "I didn't work the same shift."
2. "The employee called in sick on several consecutive Fridays."
3. "She often asked me to cover for her while she took her kids to school."
4. "She was never late or absent during the 6 months I worked with her."
5. "Her absences affected the work flow on our unit."

Correct Answer: 2,3,5

Rationale 1: This statement is rather neutral, gives little information about the case, and would not support either side.

Rationale 2: This case exemplifies a pattern of absenteeism that supports the hospital's case (the defendant) against the employee.

Rationale 3: The defendant in this case is the hospital. This statement indicates that there may be a pattern of tardiness.

Rationale 4: This statement supports the case of the employee who filed the suit who is the plaintiff in this action.

Rationale 5: This statement supports the defendant hospital's allegation of excessive absenteeism.

Global Rationale:

Cognitive Level: Analyzing

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Evaluation

Learning Outcome: 2.1 List and explain the purpose of the six procedural steps in the trial process.

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Question 2

Type: MCMA

A nurse is served with a summons alerting him that he has been named in a malpractice lawsuit. What information can the nurse learn from this summons?

Note: Credit will be given only if all correct choices and no incorrect choices are selected.

Standard Text: Select all that apply.

1. Names of any other defendants in the case
2. Name of the plaintiff in the case
3. Expected length of the trial
4. Date to appear before the court
5. Breaches in standards of care, injuries, or damages alleged by the defendant

Correct Answer: 1,2,4

Rationale 1: The summons will list other defendants named in the complaint.

Rationale 2: The person bringing the suit, or the plaintiff, will be named in the complaint summons.

Rationale 3: A complaint summons is notification that the lawsuit exists and demands that the defendants appear before the court. The length of time of the trial is not indicated on this summons.

Rationale 4: A date to appear, which may change as proceedings progress, is listed on the original complaint summons.

Rationale 5: Allegations are made by the plaintiff in the case.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Assessment

Learning Outcome: 2.1 List and explain the purpose of the six procedural steps in the trial process.

Question 3

Type: MCSA

In which case might a default judgment be entered?

1. The defendant did not respond to the complaint and would otherwise have been shown to have liability.
2. The defendant did not respond to the complaint.
3. The plaintiff did not respond to the complaint.
4. The plaintiff did not respond to the complaint and would otherwise have been shown to have liability.

Correct Answer: 2

Rationale 1: If the defendant does not respond, liability is assumed and does not have to be shown or proven.

Rationale 2: Default judgments are entered when a defendant does not respond to the complaint by the plaintiff.

Rationale 3: The plaintiff has initiated the complaint, so a response is not necessary.

Rationale 4: The plaintiff is the person bringing the complaint, so a judgment is not entered against the plaintiff in a case.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Assessment

Learning Outcome: 2.1 List and explain the purpose of the six procedural steps in the trial process.

Question 4

Type: MCSA

The attorney for a nurse named in a malpractice case recommends that the case go to a prelitigation panel. What rationale would the attorney offer the nurse for this recommendation?

1. These panels ensure that there is a controversy or fact question for the court.
2. Using such a panel negates the need for a full jury trial.
3. Such panels shorten the time between filing and conclusion of the lawsuit.
4. Questioning of witnesses is not conducted under oath and is more informal.

Correct Answer: 1

Rationale 1: The sole purpose of a prelitigation panel is to determine facts and whether there is indeed an actual controversy.

Rationale 2: Jury trials often proceed after a panel review and are not negated.

Rationale 3: In states that use this type of panel, lawsuits are often extended by 6 to 12 months.

Rationale 4: While it is an informal process, this informality is not the primary reason for using prelitigation panels.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 2.2 Examine alternate means of resolving controversies, including alternate dispute resolution, mediation, arbitration, and prelitigation panels.

Question 5

Type: MCSA

A nurse named in a malpractice case may wish to avoid the expense of a trial by going to arbitration. What is another rationale for using this process?

1. There is no need to have attorney representation.
2. Arbitration is not binding, so if the parties do not like the outcome, nothing is lost.
3. Witnesses do not testify under oath and are easier to obtain.
4. There is no formal record made of the arbitration process.

Correct Answer: 4

Rationale 1: Both sides have legal counsel during arbitration.

Rationale 2: The decision of the arbitrator is binding.

Rationale 3: Arbitration is a formal process where sworn testimony is heard.

Rationale 4: Arbitration is an alternative dispute resolution method. No formal record is made of the arbitration process. This allows the proceedings to be confidential.

Global Rationale:

Cognitive Level: Analyzing

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Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Planning

Learning Outcome: 2.2 Examine alternate means of resolving controversies, including alternate dispute resolution, mediation, arbitration, and prelitigation panels.

Question 6

Type: MCMA

Depositions will be taken of witnesses in a wrongful termination suit filed against the hospital by a former employee. Which information should the attorneys provide to the witnesses that will be deposed?

Note: Credit will be given only if all correct choices and no incorrect choices are selected.

Standard Text: Select all that apply.

1. The testimony provided is sworn testimony.
2. Witnesses being deposed will be questioned by their attorney.
3. Once the testimony is recorded no changes can be made to the record.
4. The witness may refer to notes during the disposition.
5. The deposition will be taken in a courtroom with a judge in attendance.

Correct Answer: 1,4

Rationale 1: The deposing witness is under oath during the entire deposition. Once the deposition is reviewed and signed by the witness it becomes sworn testimony.

Rationale 2: The attorney for the deposing party does not take an active part in the deposition. Questions will be asked by the opposing attorney.

Rationale 3: The witness will be allowed to review and make minor changes such as for typographical errors. No substantive changes to the record can be made.

Rationale 4: The witness may bring medical records, notes, and literature sources to the deposition, and may refer to them as needed during the deposition.

Rationale 5: Depositions are often taken in an attorney's office. A judge is not present.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

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Nursing/Integrated Concepts: Nursing Process: Planning

Learning Outcome: 2.3 Distinguish between traditional depositions, court reporter–recorded depositions, and the more modern videotaped depositions, stating the advantages and challenges of each of these methods.

Question 7

Type: MCSA

A nurse has agreed to participate in a videotaped deposition in a malpractice case. What does this indicate?

1. The nurse is testifying as an expert witness.
2. The nurse's testimony can be presented in court, even though the nurse is unavailable for the trial date.
3. The nurse is afraid testimony will adversely affect employment opportunities.
4. The plaintiff's attorney believes the nurse is a liability for personal trial appearance, but will be credible on tape.

Correct Answer: 2

Rationale 1: There is no indication that this nurse is testifying as an expert witness.

Rationale 2: Taped depositions are frequently reserved for witnesses who will not be present for the actual trial.

Rationale 3: The video will be played as a part of the trial procedures, so there would be no difference in its effect on employment opportunities.

Rationale 4: There is no indication that this nurse will be a liability for personal trial appearance.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Assessment

Learning Outcome: 2.3 Distinguish among traditional depositions, court reporter–recorded depositions, and the more modern videotaped depositions, stating the pros and cons of each of these methods.

Question 8

Type: MCSA

Which person would best qualify as an expert in a nursing malpractice case filed because of failure of a postanesthesia care unit nurse to recognize the early signs and symptoms of respiratory arrest?

1. The director of clinical pharmacy who holds a doctoral degree in clinical pharmacology
2. A staff nurse who works on the general medical unit and has recently earned a BS in nursing.

3. The director of nursing at the hospital who holds an MSN in nursing administration
4. A critical care nurse who holds a BS in nursing and certification from the American Association of Critical Care Nurses (AACN)

Correct Answer: 4

Rationale 1: Simply holding an advanced degree does not indicate expert knowledge in postanesthesia care.

Rationale 2: The staff nurse does not have experiential knowledge of postanesthesia unit care.

Rationale 3: Simply holding an advanced degree and being in a leadership roll does not indicate expert knowledge in postanesthesia care.

Rationale 4: The expert witness is an individual who is highly specialized in the field relevant to the case. In this scenario, recognizing respiratory arrest signs and symptoms are patient care aspects that should be well known to the critical care nurse. Therefore, this individual would be best able to discuss the patient care standards of practice. The individual's education and certification in a specialty add further evidence of expert skills and knowledge.

Global Rationale:

Cognitive Level: Analyzing

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Assessment

Learning Outcome: 2.4 Distinguish between lay and expert witnesses and their roles in the trial process.

Question 9

Type: MCSA

Which statement best describes the rule regarding expert testimony in nursing malpractice cases?

1. Expert testimony is always required in nursing malpractice suits, and the injured party cannot win his or her case without expert testimony being presented.
2. Whether expert testimony is needed is decided on a case-by-case basis after analyzing the facts of the case.
3. Expert testimony should be presented whenever there is reason to suspect that the jury will decide in favor of the injured party if expert testimony is not presented.
4. The jury is permitted to decide, based on all the evidence submitted, whether expert testimony is needed.

Correct Answer: 2

Rationale 1: The likelihood of one side of a case winning or losing should not be the determining factor in whether to present expert testimony.

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Rationale 2: Expert testimony is used to help the jury make conclusions that may involve facts or scientific information that is more than common knowledge. Use of expert testimony is considered on a case-by-case basis.

Rationale 3: The likelihood of one side of a case winning or losing should not be the determining factor in whether to present expert testimony.

Rationale 4: The decision to use expert testimony is not made by the jury but by the legal representation of both parties in the case.

Global Rationale:

Cognitive Level: Analyzing

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 2.4 Distinguish between lay and expert witnesses and their roles in the trial process.

Question 10

Type: MCMA

A nurse has been called as a lay witness in a malpractice lawsuit. What information should be provided to the nurse regarding this testimony?

Note: Credit will be given only if all correct choices and no incorrect choices are selected.

Standard Text: Select all that apply.

1. Lay witnesses testify to what others have said about the incident under question.
2. The testimony should include opinion on the appropriateness of care provided.
3. These witnesses tell only what has transpired from their perspective.
4. Lay witnesses may answer hypothetical questions for the jury.
5. The lay witness must have a direct connection to the case.

Correct Answer: 3,5

Rationale 1: Witnesses must tell only what they saw or know, not what was told to them by others.

Rationale 2: Lay witnesses can testify only to the facts and may not draw conclusions or form opinions.

Rationale 3: Testimony is a presentation of factual information that an individual can relay relevant to his or her own perspective.

Rationale 4: Lay witnesses can testify only to the facts and may not draw conclusions. Therefore, they cannot answer hypothetical questions.

Rationale 5: Nurses may be called to serve as a lay witness to describe for the jury what, when and how a particular event occurred. The nurse must have a direct connection to the case in order to provide this information.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Planning

Learning Outcome: 2.4 Distinguish between lay and expert witnesses and their roles in the trial process.

Question 11

Type: MCSA

The nurse is involved as an expert witness in a civil court case where life support was withdrawn and the patient expired. Which level of evidence is expected for this case?

1. Voir dire evidence
2. Preponderance of evidence
3. Evidence beyond a reasonable doubt
4. Clear and convincing evidence

Correct Answer: 4

Rationale 1: Voir dire refers to jury selection, not levels of evidence.

Rationale 2: Preponderance of evidence is based on the probable truth or accuracy of the evidence presented, the evidence remains subjective, and the judge or jury must be persuaded that the facts are more probable one way than another way.

Rationale 3: Evidence beyond a reasonable doubt is the highest level of evidence and is generally the standard required in criminal cases.

Rationale 4: For most courts, clear and convincing evidence is the highest level of proof that can be applied in a civil case and is generally the standard of proof seen in a withdrawal of life-sustaining measures cases.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

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Nursing/Integrated Concepts: Nursing Process: Assessment

Learning Outcome: 2.5 Examine levels of evidence and state which level is most appropriate in criminal and civil court cases.

Question 12

Type: MCSA

Criminal charges have been brought against a nurse who made a medication error that resulted in a child's death. Which level of evidence is expected in this case?

1. Preponderance of evidence
2. Clear and convincing evidence
3. Discovery evidence
4. Evidence beyond a reasonable doubt

Correct Answer: 4

Rationale 1: Preponderance of evidence is based on the probable truth or accuracy of the evidence presented, the evidence remains subjective, and the judge or jury must be persuaded that the facts are more probable one way than another way.

Rationale 2: For most courts, clear and convincing evidence is the highest level of proof that can be applied in a civil case.

Rationale 3: Discovery is not a level of evidence.

Rationale 4: Evidence beyond a reasonable doubt is the highest level of evidence and is generally the standard required in criminal cases.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Assessment

Learning Outcome: 2.5 Examine levels of evidence and state which level is most appropriate in criminal and civil court cases.

Question 13

Type: MCSA

A nurse has been called to testify in a malpractice lawsuit. Which information should the attorney provide about the process of cross-examination?

1. Cross-examination allows the nurse to ask questions of the opposing counsel.
2. During this process opposing counsel will try to refute the nurse's testimony.
3. Cross-examination is a process to ensure that both attorneys question all witnesses.
4. This process allows opposing counsel to explain the meaning of the nurse's testimony.

Correct Answer: 2

Rationale 1: Attorneys do the questioning in a trial, not the parties to the lawsuit.

Rationale 2: Cross-examination of a witness is a specific strategy by the opposing attorney to discredit or negate the witness's testimony.

Rationale 3: While both attorneys have the option to question all witnesses, they are not required to do so.

Rationale 4: Attorneys do not explain testimony, but rather ask questions to support their client's case.

Global Rationale:

Cognitive Level: Applying

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 2.6 Enumerate the trial process, including the purposes and steps of the various stages in the process.

Question 14

Type: MCMA

A patient has filed a lawsuit alleging that negligence by a nurse resulted in permanent injury to his legs. At trial what is this person's burden of proof?

Note: Credit will be given only if all correct choices and no incorrect choices are selected.

Standard Text: Select all that apply.

1. That the nurse intended to injure the patient
2. That the alleged incident actually occurred
3. That the nurse being charged was improperly trained and supervised
4. That the incident caused the plaintiff's injury
5. That the plaintiff recognized the injury within days of discharge

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Correct Answer: 2,4

Rationale 1: The patient does not have to prove that the nurse intentionally meant to injure the patient.

Rationale 2: The plaintiff must prove that the incident being discussed actually did occur.

Rationale 3: While training and supervision may be part of the information brought to trial it is not part of the required burden of proof.

Rationale 4: The plaintiff must prove that his injury was caused by the incident he claims occurred.

Rationale 5: The statute of limitations is not a matter of days. This is not part of the plaintiff's burden of proof.

Global Rationale:

Cognitive Level: Analyzing

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 2.6 Enumerate the trial process, including the purposes and steps of the various stages in the process.

Question 15

Type: MCSA

A nurse has agreed to serve as an expert witness in a jury trial. What is this nurse's major ethical concern?

1. Ability to stay objective and unbiased in the work
2. Fulfilling the obligation to "fill in the blanks" in the medical record
3. To explain that unexpected outcomes sometimes occur in health care
4. To make a logical and fair decision at trial

Correct Answer: 1

Rationale 1: The expert witness has task of being objective and unbiased and conveying these qualities to the judge and jury.

Rationale 2: The expert witness must guard against "filling in the blanks" of the medical record with information that is not present.

Rationale 3: While unexpected outcomes do occur in health care, it is not the expert witness's role to explain that at trial.

Rationale 4: The judge or jury makes the decision at trial.

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Global Rationale:

Cognitive Level: Analyzing

Client Need: Safe Effective Care Environment

Client Need Sub: Management of Care

Nursing/Integrated Concepts: Nursing Process: Implementation

Learning Outcome: 2.7 Discuss some of the ethical issues facing the expert witness.