

How Does Contract Law Affect Nurses?

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Contract law involves promises, either current or in the future, that are enforceable or otherwise recognizable at law. 1 Contract law does not involve the law of torts but rather is created by agreement of the parties to a written or oral agreement. 2 There are many types of contracts: a contract for the sale of property for a specific price, a performance contract, a marriage contract, and a service contract, as examples.

In order for a contract to be valid, certain elements must exist: (1) capacity to enter into the contract; (2) an offer and an acceptance of the offer; (3) legal consideration (e.g., money or conduct); and (4) no defense that would render the contract void (e.g., minority, bad faith). 3

Surprisingly, contract law is an important aspect of nursing practice. If you have been hired under a *contract of employment* or an *employment agreement*, for example, your position is governed by that contract. The contract most probably includes provisions regarding your stated salary, your benefits, the length of the contract, how it can be terminated by either you or your employer, what your job requirements are, defines a breach of the contract and the consequences thereof, and how the contract can be altered or changed by either party.

If not hired under an explicit contract of employment, you are an employee-at-will and therefore have no definite length of time for your employment at the facility where you were hired. Likewise, it is fairly well settled that the employee handbook that governs your employment is *not* a contract of employment.

Most employee handbooks contain a disclaimer to avoid the interpretation of the handbook as a contract of employment. The disclaimer states clearly that the handbook is not a contract of employment and the employer retains the right to make changes to the handbook as it sees fit.

If you are a member of a union, your bargaining agreement is a contract that governs your employment with your employer. As you know, such agreements contain provisions for hiring and firing of union members, seniority rights, and rights and responsibilities of both the employer and employee under the National Labor Relations Act. 4

Contract law also applies to health care generally. For example, if you are an advanced practice nurse and promise or warrant to a patient that you will cure the health problem the patient initially saw you for, and that does not happen, the patient can file a suit alleging an express contract was formed but he was not cured. The damages the patient would seek in this suit are the monies he expended during the treatment.

Another application of contract law to the health care setting is when a patient requests that you, as his or her nurse, witness a legal document such as a testamentary will or a living will while the patient is hospitalized or when you see him in his or her home. Although as a nurse you may witness a patient's signature on a consent form, for example, witnessing the patient's signature on a personal legal document *not* related to the patient's nursing care is quite different and may involve the nurse in a lawsuit concerning personal issues of the patient and the document (e.g., What were your observations of the patient when witnessing his signature? Who was present when you witnessed the patient's signature?).

So, what do you need to keep in mind about contract law and your nursing practice? Some tips include:

- Contract law is different from tort law;
- If you have a contract of employment, read it over carefully and have it reviewed by an attorney ; it is a legally binding document, both on you and your employer;
- Do not rely on your employee handbook as a contract of employment. Read its disclaimer carefully. If a problem arises with your job, seek legal advice and take the employee handbook with you for the attorney to review;
- If you are a member of a union, always seek advice from your union representative if employment problems arise;
- Never promise or warrant any outcome to a patient;
- Check your facility or agency policy regarding witnessing a patient's personal legal documents; and
- When a prospective employer promises you something when applying for a job (e.g., "We want you to be our employee for at least 4 years."), ask for the promise in writing.

FOOTNOTES

1. Brian A. Garner, Editor In Chief (1990). Black's Law Dictionary. 8th Edition.

St. Paul, MN: Thomson West, 341.

1. Id.
2. Daniel Bussel and Arthur Rosett (2011). Contract Law And Its Application. 8th Edition. St. Paul, MN: Thomson Reuters, 28.
3. 29 U.S.C. Sections 151-169 (1935).

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