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Short Textbooks for Nursing Education - Focus on Elderly Care

Theo Ahrens

Liability Law and Professional Duties

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Bibliographic Information

Theo Ahrens – Short Biography

Theo Ahrens, born in 1979 near Munich, is a teacher of nursing professions and a dedicated nursing educator. After a Voluntary Social Year in a hospital, he completed training as a health and nursing caregiver and gained valuable professional experience in the intensive care unit. Driven by his desire to share knowledge, he studied nursing education and began teaching at a vocational school in Munich in 2009. Theo is known for his practical and empathetic teaching, preparing future caregivers for their demanding profession. Privately, he lives with his wife and two children in Berlin and is actively involved in volunteering for better conditions in nursing education.

This guide was formulated from his existing materials using A.I. Translation was performed automatically.

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1 Introduction

1.1 Goals of this Short Textbook

This concise textbook aims to provide you with a clear overview of the complex topics of liability law and professional duties in elderly care. The focus is on imparting the knowledge necessary to master everyday challenges regarding legal and ethical responsibility.

The goal is to clearly explain to you the different types of liability and their legal prerequisites. You should learn how to recognize liability cases in your professional routine, prevent them proactively, and act correctly in cases of emergency. Likewise, awareness of the importance of care documentation should be heightened, and its correct maintenance ensured.

An essential aspect is understanding breaches of duty, their possible consequences, and developing strategies to avoid them. Additionally, you should comprehend and internalize professional duties as an integral part of your daily work. The content aims to convey both legal foundations and practical recommendations to optimally support you in your professional development.

1.2 Importance of Liability and Professional Duties in Elderly Care

In geriatric care, liability plays a crucial role as care services and caregivers bear great responsibility towards residents, relatives, and society. This responsibility arises from the duty to ensure high-quality, safe, and respectful care. Failure to fulfill these duties can result in legal consequences.

Liability issues primarily concern the fields of civil, criminal, and labor law. A significant consequence can be the civil claim for damages, which arises from breaches of duty due to negligence or intent. Criminal liability pertains to the personal guilt of the care staff, particularly in serious violations that endanger the lives or health of residents. In the labor law context, disciplinary measures by the employer, up to and including termination, may threaten in cases of duty violations.

Professional duties in geriatric care encompass legal and ethical guidelines that direct the actions of caregivers. These duties ensure that residents are treated with respect and dignity at all times. This includes the obligation for careful documentation of care, serving both quality assurance and evidence in liability cases. Other duties include confidentiality, adherence to hygiene regulations, and the obligation for continuous training and education.

Misconduct or ignoring these professional duties can have not only legal consequences but also severely damage the trust of residents and their relatives. Therefore, it is essential to understand and implement the importance of liability and professional duties to ensure safe and ethically sound geriatric care. These foundations create the basis for professional practice that meets not only legal requirements but also places the well-being of the residents at the forefront

1.3 Role of Caregivers in Liability Law and Their Responsibility

Caregivers play a key role in liability law, as they interact directly with residents and are responsible for their well-being. Their responsibility includes ensuring that all care measures are carried out professionally and prudently. This responsibility arises from the obligation to comply with legal and ethical standards.

Adhering to the duty of care is essential. Caregivers must take the necessary actions at all times to ensure residents' well-being. This means they must identify and prevent care risks. It is not only the actual execution of care that is important, but also the accurate documentation and communication of what has occurred in care practice.

Responsibility in liability law also means that caregivers must continuously expand their professional competence. Participation in training and continuing education is indispensable to stay updated with current care practices and legal requirements. Essential knowledge includes current hygiene regulations and emergency procedures, as well as the proper handling of medical devices and medications.

Fulfilling their responsibility also obliges caregivers to actively collaborate within the team. This includes communication with other healthcare providers, residents, and their families. Careful documentation is not only evidence in case of liability, but also serves effective collaboration and quality assurance in care services.

To avoid the consequences of breaching these responsibilities, caregivers must be aware of and actively assume their central role. Understanding their responsibility in liability law can minimize the risk of liability cases and sustainably improve the quality of care. This active responsibility not only protects residents but also shields caregivers themselves from legal consequences and helps maintain professional reputation.

2 Fundamentals of Liability Law in Elderly Care

2.1 Definition and Importance of Liability in the Nursing Profession

Liability in the Care Profession

Liability in the care profession refers to the legal obligation to be accountable for damages caused by one's own actions or omissions. In elderly care, liability plays a central role because caregivers have a special responsibility due to their close contact with individuals in need of care.

This liability responsibility extends to various areas: civil liability, criminal liability, and employment liability. In practice, it may involve claims for compensation in case of a care error, potential criminal consequences for serious violations, or disciplinary actions by the employer.

Caregivers must be aware of their obligations to ensure the safety and well-being of the care recipients. This requires careful work practices, regular training, and adherence to standards and procedures. Only in this way can the risk of liability cases be minimized.

The particular importance of liability in the care profession arises from the vulnerability of those needing care. Every mistake can have serious consequences. Therefore, awareness of the legal framework is an important component of professional caregiving practice.

2.2 Differences between civil, criminal, and employment liability

Liability in elderly care touches on different areas of law: civil, criminal, and labor law. Each of these areas has its own prerequisites and consequences.

Civil liability requires the payment of compensation when damage is caused by negligent or intentional actions. Caregivers can be held liable if they breach their duty of care and a resident is harmed as a result. Example: A resident falls because a caregiver forgot to close the bed rail.

Criminal liability arises from legal violations that result in criminal prosecution. It involves culpable actions that violate the penal code. Possible consequences include fines or imprisonment. An example would be bodily harm, such as when a resident is injured due to gross negligence because medications are administered incorrectly.

Labor liability concerns the relationship between caregivers and their employer. Here, breaches of duty can lead to disciplinary actions such as warnings or terminations. Such a case might occur if a caregiver repeatedly ignores service instructions, thereby disrupting or endangering the operational process.

Understanding these distinctions helps caregivers assess their responsibilities accurately and avoid legal consequences. Regular training and the use of legally compliant work practices are essential to minimize risks.

2.3 Relationship between Liability, Responsibility, and Breach of Duty

The Relationship Between Liability, Responsibility, and Breach of Duty in Elderly Care

The relationship between liability, responsibility, and breach of duty in elderly care forms a sensitive framework that significantly influences the daily lives of care workers. Liability arises when care workers violate their professional duties, causing harm. Such breaches of duty can result from negligence, ignorance, or disregarding care standards. Responsibility is the obligation to act according to one's professional role and ethical principles.

Responsibility goes beyond merely adhering to legal requirements and includes moral and ethical considerations that prioritize the well-being of those in care. A breach of duty occurs when care workers do not properly perform their job-specific tasks, constituting a violation of legally or contractually agreed standards.

Care workers must be aware of the potential legal consequences their misconduct can entail. An example is the inadequate pain management of a resident, which can result from insufficient knowledge of medication. This breach of duty can have civil, criminal, and labor law consequences, depending on the severity and impact on the resident.

A clearly defined relationship between liability and responsibility helps develop a better understanding of rights and duties in everyday care. Preventive measures, such as training and the implementation of quality assurance measures, are essential to avoid care errors. Timely documentation and open communication within the team further help reduce the risk of liability cases.

This successfully protects the safety and well-being of vulnerable individuals while also minimizing the risk of care workers being held liable. This ensures that care workers can fulfill their important duties with the necessary legal knowledge and diligence.

2.4 Relevant Legal Foundations (BGB, SGB, Criminal Code)

The Civil Code (BGB), Social Code (SGB), and Criminal Code (StGB) form the legal foundations for liability and professional duties in elderly care.

Civil Code (BGB): The BGB regulates civil law claims. In elderly care, this primarily concerns claims for damages. These arise, for instance, from breaches of duty of care. A caregiver who negligently or intentionally harms a resident can be held liable under the BGB. Especially relevant are the provisions on unlawful acts (§§ 823 ff. BGB), which define when someone is obliged to pay compensation.

Social Code (SGB): The SGB comprises several volumes that address various aspects of social security. Particularly significant for elderly care is SGB XI, which regulates nursing care insurance. It defines benefits, care standards, and quality requirements. Adherence to these standards is binding for caregivers to ensure both the safety of residents and the legal protection of caregivers.

Criminal Code (StGB): The StGB establishes the criminal law framework for offenses that can have not only civil but also criminal consequences. In elderly care, bodily harm (§§ 223 ff. StGB) is particularly relevant. Negligent or intentional acts, such as incorrect medication administration, can be prosecuted. Crimes such as breaches of confidentiality (§ 203 StGB) are also relevant as they affect the trust relationship between residents and caregivers.

The interplay of these legal foundations is crucial. Caregivers must be familiar with and adhere to civil, social, and criminal regulations. Training and legal education are essential to minimize the risk of violations and ensure the safety of residents. Knowledge of these legal frameworks and their application in practice is a cornerstone of professional nursing care.

3 Types of Liability

3.1 Civil Liability

In the context of elder care, civil liability refers to the obligation to compensate an injured party if harm has been caused by nursing actions or omissions. The primary legal basis is the German Civil Code (BGB). In particular, §§ 823 et seq. BGB play a central role when it comes to tort claims for damages.

A claim for damages requires the violation of a duty. A caregiver must exercise the care required in traffic in their professional activities. If they breach this duty of care and a resident suffers harm as a result, this may constitute a liability case.

Example: A caregiver leaves a resident unattended who is at risk of falling and the resident falls out of bed. In this case, a claim for damages for bodily injury may exist if the duty to supervise was violated.

Furthermore, there must be evidence of negligence or intent. Negligence occurs when the required standard of care is disregarded.

For liability, proof of causality is crucial. It must be proven that the nursing misconduct was causally related to the damage that occurred. Without this proof, liability is typically not established.

Compensation covers both material and immaterial damages. Material damages can include treatment costs or loss of earnings, while immaterial damages generally consist of claims for pain and suffering. The amount of pain and suffering compensation is based on the extent of the pain endured and the individual circumstances of the case.

Finally, it should be noted that facilities and employers are liable for the nursing misconduct of their employees under the so-called "liability for vicarious agents" (according to § 278 BGB). This means that the operator of the facility can be held liable for the negligence of a caregiver. Caregivers should, therefore, exercise the utmost care in their own interest as well as that of their employers.

3.2 Criminal Liability

Criminal liability in elderly care arises when a caregiver's behavior constitutes a criminal offense. Important criminal aspects include negligence, bodily harm, and manslaughter by omission.

In contrast to civil liability, criminal liability aims to atone for wrongdoing and deter future misconduct. Here, the individual guilt of a caregiver is the focus.

Negligence is often a key criterion in criminal proceedings. A caregiver acts negligently when they disregard the required care, unintentionally causing the death or health impairment of a resident. A typical example is ignoring safety regulations, leading to an accident.

Bodily harm can occur when a caregiver, through active conduct or omission, impairs a resident's physical integrity. This also includes incorrect medication administration, which leads to health damage.

Particularly severe is manslaughter by omission. Here, the law obligates caregivers to act in certain situations to protect a resident's life. If they fail to do so without justifiable reason, it can be prosecuted as manslaughter by omission. It is crucial that there is a guarantor's position, meaning the caregiver is legally obliged to act.

Caregivers must be aware of their responsibility and the possible criminal consequences. Breaching the duty of care can not only increase personal penalties but also damage the reputation of the entire care facility. Criminal proceedings can lead to fines, imprisonment, or professional consequences. In the interest of protecting residents and their own legal security, caregivers should always act cautiously and responsibly.

3.3 Liability in Employment Law

Liability under labor law in elderly care pertains to the violation of contractual job duties and can result in disciplinary actions such as warnings or termination. A warning is an employer's notice of misconduct, simultaneously acting as a request for behavioral change. It is often a prerequisite for a conduct-related termination. Examples of behavior warranting a warning include repeated tardiness, disregard for internal policies, or failure to maintain thorough documentation.

An ordinary termination may be issued if the employment cannot continue due to personal, conduct-related, or operational reasons. A conduct-related termination generally requires a prior warning and occurs when the employee repeatedly neglects their duties, such as misconduct towards residents or colleagues. In cases of particularly serious violations, immediate termination may be enacted. Conditions for this include the presence of an important reason making it unreasonable for the employer to maintain the employment relationship. Such a reason could be the theft of medications.

Caregivers should consistently adhere to the tasks and behavioral standards stipulated in the employment contract to avoid negative legal consequences. Employers are obligated to ensure proper training and onboarding of caregivers to minimize liability risks. This involves regular training sessions on legal regulations and internal directives.

7 This is just a preview

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