




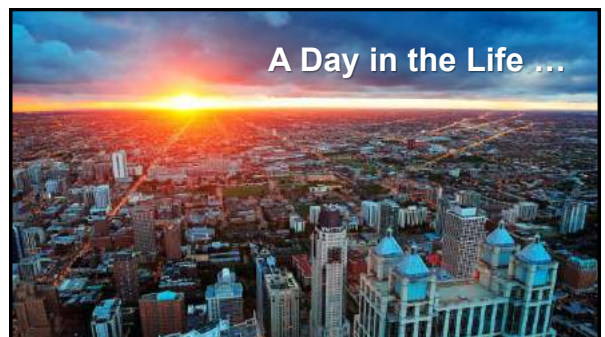

**Presenter**

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**Agenda**

- Everyday Legal Issues for Nursing Faculty
- Legal Lessons from Clinical Settings
- Poll questions: Text HUSCH to 22333; text answer to participate in polls




**Everyday Legal Issues for Nursing Faculty**

- Business concerns
  - Employee/supervisor issues
  - Contracting considerations
  - Working with regulators/accreditors
- Privacy
  - FERPA
  - Data privacy
- Discrimination
  - Disability accommodation
  - Title IX sexual misconduct
- Title IV Federal Student Aid

**9:15 a.m.**

Just as you finish your coffee, a staff member that you supervise comes in your office to complain about the new building; she's convinced that the air in the hallways is toxic and aggravating her health condition. She wants to get all of the employees together to complain. As you're in a meeting checking Facebook, you see that she's posted the same complaint on her personal page, naming College University, and asking her colleagues to join her.



### Toxic hallways. Should you...

- Ignore the posts.
- Change her working situation so she does not have to go into the hallways, and ask her to stop posting on Facebook about the University.
- Note the issue for senior administration.
- Recommend the staff member for discipline. Her gripes are not conducive to a positive learning environment.



10:00 a.m.



Reading your RSS feed, you notice an article about a new campus sexual assault bill that mentions the University briefly:

CHICAGO – One anonymous College University student told us that he witnessed a professor assault a new graduate student at an alumni event, grabbing her inappropriately and escorting her to a car where he proceeded to engage in sexual activity with her although she was visibly drunk beyond understanding.

### RSS Feed. Should you ...

- Forward the article to several friends, with the comment, "I could tell something was wrong with Janelle last week after that alumni party. I'm going to talk to her."
- Contact the student directly.
- Contact the Title IX Coordinator.
- Do nothing. There's not enough information in that statement to tell what was going on.



10:23 a.m.



You have been using a new scheduling app that you find useful. You decide to require all of your advisees to use it to schedule appointments with you, and send them an email telling them they must download it, sign up for an account and accept the terms to facilitate their advising appointments with you. You will keep records of the appointments through the app.

## Scheduling app. Any concerns?

Brainstorm...



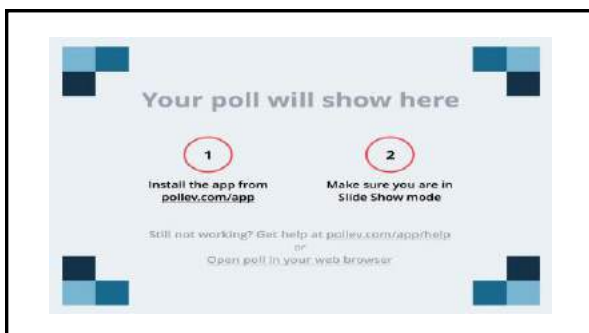
12:45 p.m.

Several students start to arrive for a meeting with you. They are abuzz about the article you saw on the RSS. Kenneth, a student you know well, pulls you aside and tells you he was on a break from his clinical assignment the night of the alumni event and decided to attend. After a few drinks, he noticed the incident with the professor and it happened the way it was reported in the article. He didn't think much of it until the next day, when he saw Janelle (the graduate student) in tears. Kenneth doesn't want to tell anyone else because he was drinking when it happened.



## Kenneth's report. Should you ...

- Contact Kenneth's clinical supervisor.
- Tell Kenneth not to worry about the drinking; under the University's Amnesty Provisions, he will not be disciplined for violation of alcohol policies.
- Talk to Janelle before discussing the matter with the Title IX Coordinator, in case Janelle wants to keep things confidential.



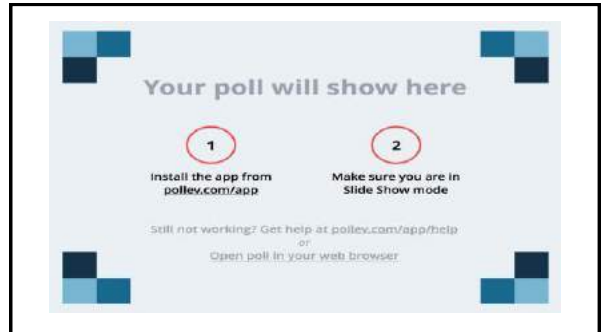
1:12 p.m.



You are in a meeting with accreditor representatives, who are conducting a focus group on the University with faculty and staff. You are asked whether a student has ever complained to you and how student complaints are handled.

## Accreditors. You respond ...

- That lots of students complain to you. And that you explain to the students that they'll just have to live with their situations, there's nothing you or the University can do.
- By saying that no student has ever complained of anything at the University. It is a perfect place.
- By explaining that you can't recall the procedural steps off-hand, but you refer the representatives to University policies and handbooks, and to senior administrators, which is where you refer students when they have concerns.



## 2:25 p.m.

You notice yet another College of Nursing student turning up on campus with saggy pants. You call a meeting at which your team decides to enact a "no saggy pants" policy.



## Saggy pants. What is the best way to enforce the policy?

- Emphasize that saggy pants can be frightening to patients.
- Pull those students who wear saggy pants into a meeting and threaten to discipline them for wearing saggy pants.
- Remind all students of University policies on professional dress, including modesty and the need to take care that undergarments cannot be seen.



## 3:17 p.m.



You notice a new student uses a wheelchair. On the student's first day, you rearrange the furniture in the classroom you are using while students are coming in so he can enter. After class, the student asks if it would be OK for him to be a few minutes late to his classes, because it takes him extra time to get there.

### Wheelchair. Should you ...

- Tell him he can take as much time as he needs, or even skip class.
- Make sure all of his instructors and clinical supervisors know he needs extra time.
- Ask him if he's requesting an accommodation and refer him to the disabilities services coordinator.



### 4:00 p.m.

A transgender student, Alicia, comes to you and complains that her clinical supervisor told her to get out of the women's restroom. Alicia was born male but identifies as female. She wants you to talk to the supervisor.



### Restrooms. Should you ...

- Tell Alicia that she must follow the clinical site's policies when it comes to restroom use.
- Speak to the supervisor and others at the clinical site in an attempt to get permission for Alicia to use the women's restroom.
- Refer the matter to the University's Title IX Coordinator.



### 5:15 p.m.



Your supervisor finally gets back to you with Board-approved changes to the University's tenure policies and wants the changes posted to the website immediately. The policy contains a table and the whole document is in (pretty blurry) .pdf format without a date. You need to leave, so you post the document your supervisor sent at the top of the site that contains other employee policies.

## Posting policy. Any concerns?

Brainstorm...



## A few weeks later ...



You notice that Janelle (the woman who was reportedly sexually assaulted) hasn't been seen on campus or in classes for weeks. You know she is behind in her coursework. You also know she had been having some financial issues when you last saw her.

## Where's Janelle? Should you ...

- Telephone her to see if she's alright.
- Alert the Title IX Coordinator.
- Call her attendance to the attention of the registrar or other appropriate personnel.
- All of the above.

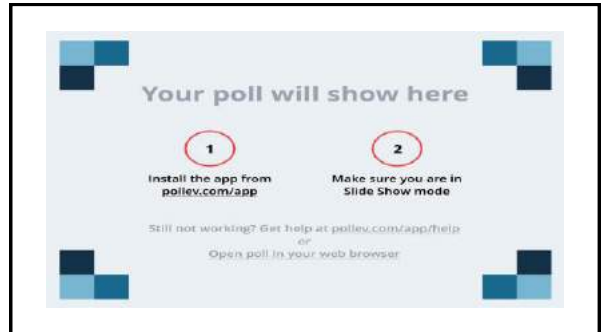


## A month later ...

- Kenneth (the student who witnessed Janelle's sexual assault), was referred for alcohol treatment. Though he said he was receiving outpatient treatment from a physician, he has been appearing on campus looking disheveled and apparently intoxicated. Kenneth has missed clinical shifts and many classes without notice. Today, Kenneth was seen giving a bottle of alcohol to a 19-year-old student on campus.

### Oh, Kenneth. Should the institution ...

- a. Dismiss Kenneth immediately for failing to honor alcohol policies.
- b. Refer Kenneth to campus resources for drug and alcohol abuse prevention.
- c. Give Kenneth notice of the University's concerns and hold a hearing if necessary, determining appropriate discipline on each charge against Kenneth.
- d. Discipline Kenneth for failing to attend treatment.
- e. B and C



### Questions



### Considerations in Clinicals

- Privacy
- Professionalism
- Accommodating students

### Clinicals in the Press

- Plenty of examples of questionable behavior
  - Inappropriate
  - Unprofessional
  - Unethical
  - Unlawful
- Often a mix of the above



### Scenario

- A student nurse doing a clinical rotation in a hospital posts a picture of her favorite patient on Facebook, a 3-year old boy battling cancer. She adds encouraging words, praising him for his bravery during chemotherapy, and expressing her pride in being a student nurse. She does not use his name in the post, or give out any personal information about him or the details about the hospital. The hospital room number is visible in the picture.

### Question: Is the student nurse's conduct:

- A. Inappropriate
- B. Unprofessional
- C. Unethical
- D. Unlawful



### Answer:

- B and D
- The student's behavior was unlawful and unprofessional (violation of patient confidentiality and HIPAA), but it is less clear whether it was unethical or inappropriate.

### Lesson Learned

- Ensure policies are in place that specifically outline legal obligations, such as patient confidentiality and HIPAA requirements



### Scenario

- A student nurse, who identified herself as a student, shared her personal views about unidentified patients in a blog, disparaging a suicidal patient and saying the patient was "sucking up some valuable nurse's aid time". She also posted about her anti-abortion beliefs relative to unidentified patients who underwent the procedure.
- (con't)





- The student called newborn babies “creeps” and disclosed numerous details about a maternity patient, but no identifying information.
- She was expelled for violations of the school’s honor code professionalism requirement. She sued, alleging violation of free speech and due process.

### Question: What was the outcome?

- A. The student was required to remove the blog entries and was ordered to cease further posting.
- B. The student was not readmitted due to violating the honor code’s professionalism requirement.
- C. The student was reinstated because the blog post was not created or used in any professional context.



### Answer:

- C.
- Although the court called the blog post “vulgar, distasteful, offensive, crass and uncouth”, the court found that she had identified herself as a student, had not violated patient confidentiality or HIPAA, and did not violate the professionalism requirement because the blog post “was not created or used in any professional context.”

### Lesson Learned

- Draft your policies and student conduct code carefully, providing your institution’s definition of “professionalism”—what is and is not professional based on accepted standards (e.g., accreditor standards, professional organization statements, etc.)
- Consider implementing social media policies that incorporate professional standards of behavior

### Scenario

- Four nursing students doing an internship posted pictures of an unidentified patient’s placenta on Facebook®. The supervising nurse knew they were taking the pictures and did not direct them to stop, or tell them not to post them to social media. The school had no policies on taking or posting pictures in a clinical setting. The students were expelled based on their “demeanor and unprofessional behavior.” The students sued the school for reinstatement.

**Question: What was the result of the students' lawsuit?**

- A. They were denied readmission and forced to apply elsewhere.
- B. They were allowed to continue coursework, but not clinical internships.
- C. They were reinstated because there was no breach of patient confidentiality, no HIPAA violation, and no violation of school policy on professionalism.



**Answer**

- C.
- The patient was unidentified, and therefore there was no breach of confidentiality, and no corresponding HIPAA violation. More importantly, the school did not have a policy banning the taking or posting of pictures in such a setting, and it was not clear the school even had a policy defining "professional" behavior in a clinical setting.

**Lesson Learned**

- A social media policy addressing the taking and posting of photos would have helped in this case.
- Also, policies and directives of supervisors is also valuable.



**It's Not Just Students**

Institutions get into trouble as well . . .



**Scenario**

- Exemplary master's degree student with a 3.96 GPA was expelled from her social work degree program just before completing her final internship. During her internship, her field supervisor became hostile to her when she learned the student was pregnant and unmarried, calling her a "beached whale" and instructing her to wear "baggy clothes" and stop rubbing her stomach because it "sexually stimulated" the men there. The supervisor stated she would keep the student in the program "but just fail [her]."
- When the student got failing marks on 53 of 54 competencies (her first negative evaluation) she was kicked out of the program. She sued the internship facility, her supervisor there, and the school. Her case went to trial.

### Question: What was the jury's finding?

- A. The student was awarded nearly \$850,000 in damages, including legal fees and costs.
- B. The student was awarded her degree and her academic record was corrected.
- C. The internship facility and supervisor were found guilty of discrimination.



### Answer

- A.
- Although this was an egregious case of personal bias and discrimination, and the jury awarded the student nearly a million dollars in damages, it is interesting to note that the court actually dismissed the charges against the internship facility and supervisor, because they were neither an employer nor an educational institution. In addition, the jury chose not to interfere with the academic decision of the school, leaving the student without her degree on the verge of graduation.

### Lesson Learned

- Be sure you know who you are partnering with when it comes to clinical settings. Do not assume the clinical supervisors have the same priorities as the school. Meet with partners to express expectations about what the school expects the student to gain from the experience, and explain the school's obligations as well, and how you expect cooperation on that front.

### Scenario

- A chiropractic college in Iowa declined to provide a blind student with a sighted reader to look at and describe x-rays to him, and he was not able to complete the program without the accommodation.

### Question: What did the court say?

- College OK: a reader would fundamentally alter the education program
- College OK: paying for readers would cause undue financial burden
- College liable: blind students are always entitled to readers
- College liable: college couldn't show that chiropractors need to read x-rays



## Answer

- The court held that the college discriminated against the blind student in violation of the ADA, because:
  - The college had granted waivers to some blind students in the past, so it could not say it was impossible to do so in this case, and
  - The college acknowledged that about 20 percent of practicing chiropractors do not have x-ray technology in their offices (they contract with radiologists).

## Answer (con't)

- In light of these facts, the court found that what was apparently important to a chiropractor was getting *information* from an x-ray, not necessarily personally reading the x-ray. As such, the college should have considered alternatives to its traditional requirements that students must read x-rays themselves.



## Lesson Learned

- When drafting policies concerning physical requirements and demands of a clinical setting, ensure that you are being consistent with past practice, and taking into account possible different means of accomplishing a task.
- No need to approve unreasonable requests that would result in a fundamental alteration of the program or would result in undue financial or administrative burdens.

## In Short:

- Schools need to thoroughly vet outside clinical settings to ensure students receive a positive learning experience that is free of harassment and discrimination, that utilizes quality supervisors, and adequately prepares the students for the intended profession.

## Big Takeaways

- Be aware of common legal compliance concerns
- Follow policies and procedures
- Know when to ask for help



Questions



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