

Texas Nursing Jurisprudence and Ethics

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- Read the enclosed course.
- Complete the questions at the end of the course.
- Return your completed Evaluation to NetCE by mail or fax, or complete online at www.NetCE.com. (If you are a Florida nurse, please return the included Answer Sheet/Evaluation.) Your postmark or facsimile date will be used as your completion date.
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Faculty

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Faculty Disclosure

Contributing faculty, Mary Franks, MSN, APRN, FNP-C, has disclosed no relevant financial relationship with any product manufacturer or service provider mentioned.

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The division planner and director have disclosed no relevant financial relationship with any product manufacturer or service provider mentioned.

Audience

This course is designed for all nurses licensed in Texas.

Accreditations & Approvals



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This course fulfills the Texas requirement for 2 hours of education on Jurisprudence and Ethics.

About the Sponsor

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Disclosure Statement

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Course Objective

The purpose of this course is to provide basic knowledge of the laws and rules governing the practice of nursing in Texas in order to increase compliance and improve patient care. Texas nurses are legally obligated to be aware of standards that govern professional accountability. Information contained in this course is not intended to be used in lieu of lawful guidelines, but as a learning tool that increases the understanding of some regulations as they apply to nurses who are licensed within the state of Texas.

Learning Objectives

Upon completion of this course, you should be able to:

1. Outline the pertinent levels of nursing practice in Texas and the general scope of practice of each.
2. Identify specific laws and rules related to the practice of nursing in Texas.
3. Differentiate between ethical and legal practice.
4. Discuss the legal and ethical requirements related to professional boundaries and unprofessional conduct in nursing.

INTRODUCTION

Nursing practice acts have a long history in the United States, with the first standards being enacted in the early 1900s [1]. In 1907, nineteen nurses from around the state formed the Texas Graduate Nurses' Association in Fort Worth. These women had a collective interest in establishing standards for the delivery of nursing care and creating a nursing board [1]. Using recent Colorado legislation as a model, the Graduate Nurses' Association advocated for nursing legislation in Texas. The Nurses Registration Act of 1909 (an early version of the Nursing Practice Act) passed the Texas Legislature, and thus the Board of Nurse Examiners, which became the Board of Nursing in 2007, was created [1].

The Texas Nursing Practice Act has undergone extensive revision and amendment since 1909 [1; 2]. Legislated to safeguard the public, its purpose is to ensure that minimum safety requirements are met by every nurse practicing in the state. The Nursing Practice Act (i.e., Chapter 301 of the Texas Occupations Code) includes laws and rules regulating nursing education, licensure, and practice [2]. Chapter 301 establishes the Texas Board of Nursing as an authority to adopt rules, develop standards for nursing programs, and discipline nurses who violate regulations [2]. Nurses who fall below the Board's required minimum competency; who present a danger to patients, coworkers, or others; or who fail to comply with all Board of Nursing rules will be prohibited from working in the state.

In addition to Chapter 301 (the Nursing Practice Act), the Board of Nursing stipulates that Texas nurses are required to be familiar with Chapter 303 (Nursing Peer Review) and Chapter 304 (the Nurse Licensure Compact) [2]. Several chapters of the Texas Administrative Code, which is a collection of all state agency rules, also pertain to nursing education, licensure, practice, and discipline. Together, these laws and rules form the basis for the legal practice of nursing and the regulation of nursing by the State of Texas. Although they are not technically laws, the Texas Board of Nursing Position Statements provide guidance regarding patient safety, scope of practice, and other important issues; the Board strongly encourages that nurses read all Position Statements, or at the very least, the Summary of Position Statements [3]. Texas nurses should also be familiar with the principles of nursing ethics and have a firm understanding of professional boundaries [3].

This course fulfills the continuing education requirement on jurisprudence and ethics related to the practice of nursing in Texas for all levels of nursing, including registered nurses (RNs), licensed vocational nurses (LVNs), registered nurse first assistants (RNFAs), and advanced practice registered nurses (APRNs) [3]. While this course will provide an overview of several pertinent sections of the laws and rules, all nurses are required to have up-to-date knowledge of them in their entirety in order to ensure compliance, retain licensure, and practice safely.

STANDARDS OF NURSING PRACTICE

The basic standards of competent practice directly impact how all nurses in Texas provide care. Not only must a nurse possess the knowledge of lawful and current care standards, but the knowledge must be demonstrated through consistent practice and intervention to prevent unauthorized, inappropriate, erroneous, illegal, contraindicated, or intentional nonperformance of care.

The Nursing Practice Act governs the practice of LVNs, RNs, APRNs, and RNFAs. LVNs are those persons licensed to practice vocational nursing, while RNs, APRNs, and RNFAs are all licensed to practice professional nursing, with various levels of specialization [3]. Both professional and vocational nurses are responsible and accountable for making decisions that are based upon their educational preparation and experience in nursing.

LICENSED VOCATIONAL NURSING

According to the Texas Nursing Practice Act, the practice of vocational nursing is defined as a “directed scope of nursing practice, including the performance of an act that requires specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biologic, physical, and social science as acquired by a completed course in an approved school of vocational nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures.” Vocational nursing involves [2]:

- Collecting data and performing focused nursing assessments of the health status of an individual
- Participating in the planning of the nursing care needs of an individual
- Participating in the development and modification of the nursing care plan

- Participating in health teaching and counseling to promote, attain, and maintain the optimum health level of an individual
- Assisting in the evaluation of an individual’s response to a nursing intervention and the identification of an individual’s needs
- Engaging in other acts that require education and training, as prescribed by Board rules and policies, commensurate with the nurse’s experience, continuing education, and demonstrated competency

Additionally, the Board of Nursing and the Nursing Practice Act state that an LVN requires appropriate supervision of an RN, APRN, physician assistant, physician, dentist, or podiatrist [2]. The LVN is required to function within the parameters of the legal scope of practice and in accordance with the federal, state, and local laws, rules, regulations, and policies, procedures, and guidelines of the employing healthcare institution or practice setting. LVNs are “responsible for providing safe, compassionate, and focused nursing care to assigned patients with predictable healthcare needs” [4].

PROFESSIONAL NURSING

The practice of professional nursing is defined as “the performance of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biologic, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures.” Professional nursing involves [2]:

- Observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of a person who is ill, injured, infirm, or experiencing a change in normal health processes
- Administration of a medication or treatment as ordered by a physician, podiatrist, or dentist

- Maintenance of health or prevention of illness
- Performance of an act delegated by a physician
- The development of the nursing care plan
- Supervision or teaching of nursing
- Administration, supervision, and evaluation of nursing practices, policies, and procedures
- Requesting, receiving, signing for, and distribution of prescription drug samples to patients at practices at which an APRN is authorized to sign prescription drug orders

The Board of Nursing further defines the scope of practice of professional nursing [5]:

The RN takes responsibility and accepts accountability for practicing within the legal scope of practice and is prepared to work in all healthcare settings, and may engage in independent nursing practice without supervision by another healthcare provider. The RN, with a focus on patient safety, is required to function within the parameters of the legal scope of practice and in accordance with the federal, state, and local laws; rules and regulations; and policies, procedures and guidelines of the employing healthcare institution or practice setting. The RN is responsible for providing safe, compassionate, and comprehensive nursing care to patients and their families with complex healthcare needs.

Advanced Practice Registered Nursing

APRNs are registered nurses who have completed additional accredited advanced-practice education and internship as recognized by the Board of Nursing [6]. The Board of Nursing specifies that APRNs must practice within their individual scope in the advanced role, meaning the particular specialty and population focus that the nurse trained for in an

advanced program [7]. The scope of practice may be defined by APRN organizations; however, in many instances, it can be up to the APRN's employer or supervisor to determine what duties he or she can perform and what types of patients can be treated [7]. This decision may be based on the nurse's clinical experience and his/her knowledge, skills, and competencies. APRNs may or may not practice the full scope of the professional role and specialty for which they trained, and an APRN is allowed to perform the full scope of duties of an RN. The Board suggests asking the following questions in order to help decide if an activity is within an individual APRN's scope of practice [7]:

- Is it consistent with the scope of one's recognized title or does it evolve into another advanced practice title recognized by the Board requiring additional formal education and legal recognition?
- Is it consistent with the Standards of Nursing Practice outlined in Board Rule 217.11?
- Are you willing to accept accountability and liability for the activity and outcomes?
- Is it consistent with one's education in the role and specialty?
- Is it consistent with one's professional scope of practice?
- Is it consistent with reasonable and prudent practice?
- Is it consistent with statutory or regulatory laws?
- Is it consistent with evidence-based care?

APRNs may assign tasks to RNs and LVNs, but the task must be within the RN's/LVN's scope of practice [8]. The Texas Board of Nursing states (in Position Statement 15.18) that RNs are expected to carry out orders issued by APRNs if the orders are within the APRN's scope of practice for their specialty [9]. RNs are expected to question an order if it is believed to be non-efficacious or contraindicated.

TEXAS NURSING PRACTICE RULES

In addition to the Nursing Practice Act, there are several chapters of the Texas Administrative Code (i.e., Chapters 211–228) that contain rules pertinent to nursing. Texas Administrative Code Rule 217.11 (Standards of Nursing Practice) contains the minimum acceptable standards for all licensed nurses. It states that the Board of Nursing is responsible for regulating the practice of nursing within the State of Texas for LVNs, RNs, and APRNs, and that action against the nurse’s license may result from a failure to meet the minimum acceptable level of practice, even if no patient injury results from a nurse’s actions or inactions [10]. All nurses practicing in Texas must meet the minimum acceptable standards specified in Rule 217.11, which includes requirements to [10]:

- Know and conform to the Texas Nursing Practice Act and the Board’s rules and regulations as well as all federal, state, or local laws, rules, or regulations affecting the nurse’s current area of nursing practice
- Implement measures to promote a safe environment for clients and others
- Know the rationale for and the effects of medications and treatments and correctly administer the same
- Accurately and completely report and document: the client’s status, including signs and symptoms; nursing care rendered; physician, dentist, or podiatrist orders; administration of medications and treatments; client response(s); and contacts with other healthcare team members concerning significant events regarding client’s status
- Respect the client’s right to privacy by protecting confidential information unless required or allowed by law to disclose the information
- Promote and participate in education and counseling to a client(s) and, where applicable, the family/significant other(s) based on health needs
- Obtain instruction and supervision as necessary when implementing nursing procedures or practices
- Make a reasonable effort to obtain orientation/training for competency when encountering new equipment and technology or unfamiliar care situations
- Notify the appropriate supervisor when leaving a nursing assignment
- Know, recognize, and maintain professional boundaries of the nurse-client relationship
- Comply with mandatory reporting requirements of Texas Occupations Code Chapter 301 (Nursing Practice Act), Subchapter I, which include reporting a nurse: who violates the Nursing Practice Act or a Board rule (except for minor incidents as stated in the Nursing Practice Act and Board rules) and contributed to the death or serious injury of a patient; whose conduct causes a person to suspect that the nurse’s practice is impaired by chemical dependency or drug or alcohol abuse; whose actions constitute abuse, exploitation, fraud, or a violation of professional boundaries; or whose actions indicate that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse’s continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior
- Provide, without discrimination, nursing services regardless of the age, disability, economic status, gender, national origin, race, religion, health problems, or sexual orientation of the client served
- Institute appropriate nursing interventions that might be required to stabilize a client’s condition and/or prevent complications

- Clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-efficacious, or contraindicated by consulting with the appropriate licensed practitioner and notifying the ordering practitioner when the decision is made not to administer the medication or treatment
- Implement measures to prevent exposure to infectious pathogens and communicable conditions
- Collaborate with the client, members of the healthcare team and, when appropriate, the client's significant other(s) in the interest of the client's health care
- Consult with, utilize, and make referrals to appropriate community agencies and health care resources to provide continuity of care
- Be responsible for one's own continuing competence in nursing practice and individual professional growth
- Make assignments to others that take into consideration client safety and that are commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made
- Accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability
- Supervise nursing care provided by others for whom the nurse is professionally responsible
- Ensure the verification of current Texas licensure or other compact state licensure privilege and credentials of personnel for whom the nurse is administratively responsible, when acting in the role of nurse administrator.

As noted, nurses are required to be familiar with all Standards of Nursing Practice. Please refer to Chapter 217 of the Texas Administrative Code for Rule 217.11 in its entirety.

ETHICAL AND LEGAL ISSUES IN NURSING PRACTICE

In addition to their legal obligations, nurses have ethical obligations to their patients. The practice of nursing is primarily one of caring, and the ethical theories for nursing are often referred to as “the ethics of caring.” Nurses are expected to address both ethical and legal issues in their practice, which can be complex. As medical advancements and new technology progress, these must be incorporated into established ethical standards. The American Nurses Association has established the Code of Ethics for Nurses, which is intended to act as “the ethical standard for the profession and provides a guide for nurses to use in ethical analysis and decision-making” [11]. The full text of this Code is available at <https://www.nursingworld.org/practice-policy/nursing-excellence/ethics/code-of-ethics-for-nurses>.

Major ethical issues that may arise in the practice of nursing are related to the provision of patient-centered care, advocacy, delegation, self-care, and supporting colleagues and the profession [11]. Ethical concepts central to patient-centered care include advocacy, confidentiality, privacy, self-determination, and the dignity and worth of all persons. Ethical concepts central to nursing practice include accountability (i.e., accepting responsibility for one's action or inaction), beneficence (i.e., the duty to do good), competence (i.e., only performing duties within one's scope of practice, acquiring new skills and education), nonmaleficence (i.e., the duty to do no harm), veracity (i.e., truthfulness), and social reform (e.g., advocating for patients and groups). Additionally, as a nurse gains experience in his or her field and specialty, the ethic of teaching comes into play. This can simply involve helping an inexperienced nurse grow by passing along knowledge, or can involve more specific leadership, supervisory, or teaching roles.

Several ethical issues are addressed in the Texas Board of Nursing Position Statements [9]. These include the issue of initiation of cardiopulmonary resuscitation (CPR) in long-term care residents in the absence of a do not resuscitate (DNR) order (e.g., when initiation of CPR would appear futile and inappropriate given the nursing assessment of the resident, despite the premise that a DNR order may only be given by a physician). Other ethical issues discussed in the Position Statements include care of those with whom the nurse has a personal relationship and issues of patient confidentiality and privacy with regard to the use of social media. Reading, thought, and discussion about ethics and potential ethical dilemmas can help nurses respond appropriately and can help prevent unethical behaviors from occurring in the workplace.

There are also a variety of legal issues that affect the provision of nursing care and maintenance of a nursing license. It is important to note that, although possibly related, the laws governing nursing practice are different from the ethical framework(s) that nurses use to guide decision making. Laws pertaining to documentation, licensure, and standards of care have been established to ensure that nurses practice within a defined scope of practice and are aware of the boundaries of independent nursing action and responsibilities. These laws also act to hold nurses accountable for maintaining an acceptable standard of patient care. However, perhaps the greatest legal concern for nurses is the threat of negligence or malpractice claims.

The tort (or medical malpractice) liability system is intended to provide deterrence to clinicians who willful or negligently injure patients; deterrence is theoretically achieved by holding practitioners legally liable for their actions or omissions [12]. According to tort law, four elements must be established for a ruling of malpractice [13]:

- Duty: The nurse owed a duty to meet a particular standard of care.

- Breach of duty: The nurse failed to perform the owed duty.
- Causation: There is a causal connection between the nurse's failure and the patient's injury.
- Damages: An injury occurred for which monetary compensation is adequate relief.

These elements must be shown by a "preponderance of the evidence," defined as more than 50% probability, a lower standard than the "beyond a reasonable doubt" used in criminal law [14; 15]. Malpractice cases are decided on the basis of what a "jury is likely to think is fact" rather than actual fact [16].

PROFESSIONAL BOUNDARIES AND UNPROFESSIONAL CONDUCT

Another facet of ethical care and practice involves maintaining appropriate limits in the nurse/patient relationship. Based on the idea that there is an imbalance of power and potential for abuse in this relationship (due to the nurse's power and the patient's vulnerability), the State of Texas requires all nurses to be familiar with and abide by the laws and rules regarding the limits of the nurse/patient relationship [3; 17]. Nurses should strive to promote the patient's best interests, dignity, and independence and refrain from inappropriate involvement in the patient's personal relationships and/or the obtainment of personal gain at the patient's expense. Violating professional boundaries of the nurse/patient relationship includes, but is not limited to, emotional, financial, physical, or sexual exploitation of the patient or the patient's family [16]. These violations and other types of unprofessional conduct are grounds for disciplinary action by the Board.

The State of Texas defines unprofessional conduct, in Texas Administrative Code Rule 217.12, as “unprofessional or dishonorable behaviors of a nurse that the Board believes are likely to deceive, defraud, or injure clients or the public” [17]. These behaviors include but are not limited to [17]:

- Unsafe practice, including, but not limited to:
 - Carelessly failing, repeatedly failing, or exhibiting an inability to perform vocational, registered, or advanced practice nursing in conformity with the standards of minimum acceptable level of nursing practice set out in Rule 217.11
 - Carelessly or repeatedly failing to conform to generally accepted nursing standards in applicable practice settings
 - Improper management of client records
 - Delegating or assigning nursing functions or a prescribed health function when the delegation or assignment could reasonably be expected to result in unsafe or ineffective client care
 - Accepting the assignment of nursing functions or a prescribed health function when the acceptance of the assignment could be reasonably expected to result in unsafe or ineffective client care
 - Failing to supervise the performance of tasks by any individual working pursuant to the nurse’s delegation or assignment
 - Failure of a clinical nursing instructor to adequately supervise or to assure adequate supervision of student experiences
- Failure of a chief administrative nurse to follow appropriate and recognized standards and guidelines in providing oversight of the nursing organization and nursing services for which the nurse is administratively responsible
- Failure to practice within a modified scope of practice or with the required accommodations, as specified by the Board in granting a coded license or any stipulated agreement with the Board
- Careless or repetitive conduct that may endanger a client’s life, health, or safety (whether or not actual injury to a client is established)
- Inability to practice safely, as defined by demonstration of actual or potential inability to practice nursing with reasonable skill and safety to clients by reason of illness; use of alcohol, drugs, chemicals, or any other mood-altering substances; or as a result of any mental or physical condition
- Misconduct, including, but not limited to:
 - Falsifying reports, client documentation, agency records, or other documents
 - Failing to cooperate with a lawful investigation conducted by the Board
 - Causing or permitting physical, emotional, or verbal abuse or injury or neglect to the client or the public, or failing to report same to the employer, appropriate legal authority, and/or licensing board
 - Violating professional boundaries of the nurse/client relationship, including but not limited to physical, sexual, emotional, or financial exploitation of the client or the client’s significant other(s)
 - Engaging in sexual conduct with a client, touching a client in a sexual manner, requesting or offering sexual favors, or language or behavior suggestive of the same
 - Threatening or violent behavior in the workplace

- Misappropriating, in connection with the practice of nursing, anything of value or benefit, including, but not limited to, any property (real or personal) of the client, employer, or any other person or entity; or failing to take precautions to prevent such misappropriation
- Providing information that was false, deceptive, or misleading in connection with the practice of nursing
- Failing to answer specific questions or providing false or misleading answers that would have affected the decision to license, employ, certify, or otherwise utilize a nurse
- Offering, giving, soliciting, or receiving or agreeing to receive (directly or indirectly) any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services
- Failure to pay child support payments as required by the Texas Family Code §232.001
- Diversion or attempts to divert drugs or controlled substances
- Dismissal from a Board-approved peer assistance program for noncompliance and referral by that program to the Board
- Other drug-related actions or conduct including, but not limited to:
 - Use of any controlled substance or any drug (prescribed or unprescribed), device, or alcoholic beverages while on duty or on call and to the extent that such use may impair the nurse’s ability to safely conduct to the public the practice authorized by the nurse’s license
 - Falsification of or making incorrect, inconsistent, or unintelligible entries in any agency, client, or other record pertaining to drugs or controlled substances
 - Failing to follow the policy and procedure in place for the wastage of medications at the facility where the nurse was employed or working at the time of the incident(s)
 - A positive drug screen for which there is no lawful prescription
 - Obtaining or attempting to obtain or deliver medication(s) through means of misrepresentation, fraud, forgery, deception, and/or subterfuge
- Unlawful practice, including, but not limited to:
 - Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage in the unlawful practice of vocational, registered, or advanced practice nursing
 - Violating an order of the Board; carelessly or repetitively violating a state or federal law relating to the practice of vocational, registered, or advanced practice nursing; or violating a state or federal narcotics or controlled substance law
 - Knowingly aiding, assisting, advising, or allowing a nurse under Board order to violate the conditions set forth in the order
 - Failing to report violations of the Nursing Practice Act and/or the Board’s rules and regulations
- Leaving a nursing assignment (including a supervisory assignment) without notifying the appropriate personnel

WORKPLACE VIOLENCE

In 2018, the Board issued a new position statement addressing workplace violence [9]. It is important for the interprofessional team to work collaboratively in support of an effective violence prevention program. This includes acknowledging the value of a safe, violence-free workplace; ensuring and exhibiting equal commitment to the safety and health of workers and patients; and maintaining a system of accountability for all involved members of the healthcare team [9].

THE USE OF SOCIAL MEDIA

The issue of exploitive or inappropriate use of patient information or images on social media is becoming increasingly significant. As discussed, the Board of Nursing Position Statement 15.29: Professional Boundaries Including Use of Social Media by Nurses offers clarification on the relevant ethical and legal issues regarding this topic, including the use of social media as a beneficial tool for nurses and patients alike. The statement emphasizes that confidentiality and privacy extend to online posts or conversations and, more specifically, that [9]:

- Patient-related images are not to be transmitted via electronic media, regardless of whether the patient is identified by name; taking photo or video of patients with personal devices, including cell phones, is prohibited. Images taken for legitimate purposes, using employer-provided devices, may be allowed based on employer policy.
- Use caution when having online social contact with patients or former patients. The fact that a patient may initiate contact with the nurse does not permit a personal relationship.
- Nurses should not make disparaging remarks about patients, co-workers, or employers on social media, even if persons are not identified.

For the full text of the Position Statement regarding the use of social media by nurses, and all other Position Statements, please visit https://www.bon.texas.gov/practice_bon_position_statements.asp.html.

CONCLUSION

It is the responsibility of the Texas Board of Nursing to enforce the rules regulating the practice of nursing as the rules are currently stated—not how individuals may wish them to be. As nurses are affected by these rules and regulations, they have the responsibility to keep informed of regulatory changes in order to maintain licensure. It should be remembered that practicing within the minimum standards, though a necessity, is not all that is expected of nurses. Fulfilling ethical obligations to patients, co-workers, employers, and society is also an important part of health care, and it is only when the regulatory and ethical aspects of practice are combined that a nurse can be fully effective.

Implicit Bias in Health Care

The role of implicit biases on healthcare outcomes has become a concern, as there is some evidence that implicit biases contribute to health disparities, professionals' attitudes toward and interactions with patients, quality of care, diagnoses, and treatment decisions. This may produce differences in help-seeking, diagnoses, and ultimately treatments and interventions. Implicit biases may also unwittingly produce professional behaviors, attitudes, and interactions that reduce patients' trust and comfort with their provider, leading to earlier termination of visits and/or reduced adherence and follow-up. Disadvantaged groups are marginalized in the healthcare system and vulnerable on multiple levels; health professionals' implicit biases can further exacerbate these existing disadvantages.

Interventions or strategies designed to reduce implicit bias may be categorized as change-based or control-based. Change-based interventions focus on reducing or changing cognitive associations underlying implicit biases. These interventions might include challenging stereotypes. Conversely, control-based interventions involve reducing the effects of the implicit bias on the individual's behaviors. These strategies include increasing awareness of biased thoughts and responses. The two types of interventions are not mutually exclusive and may be used synergistically.

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