



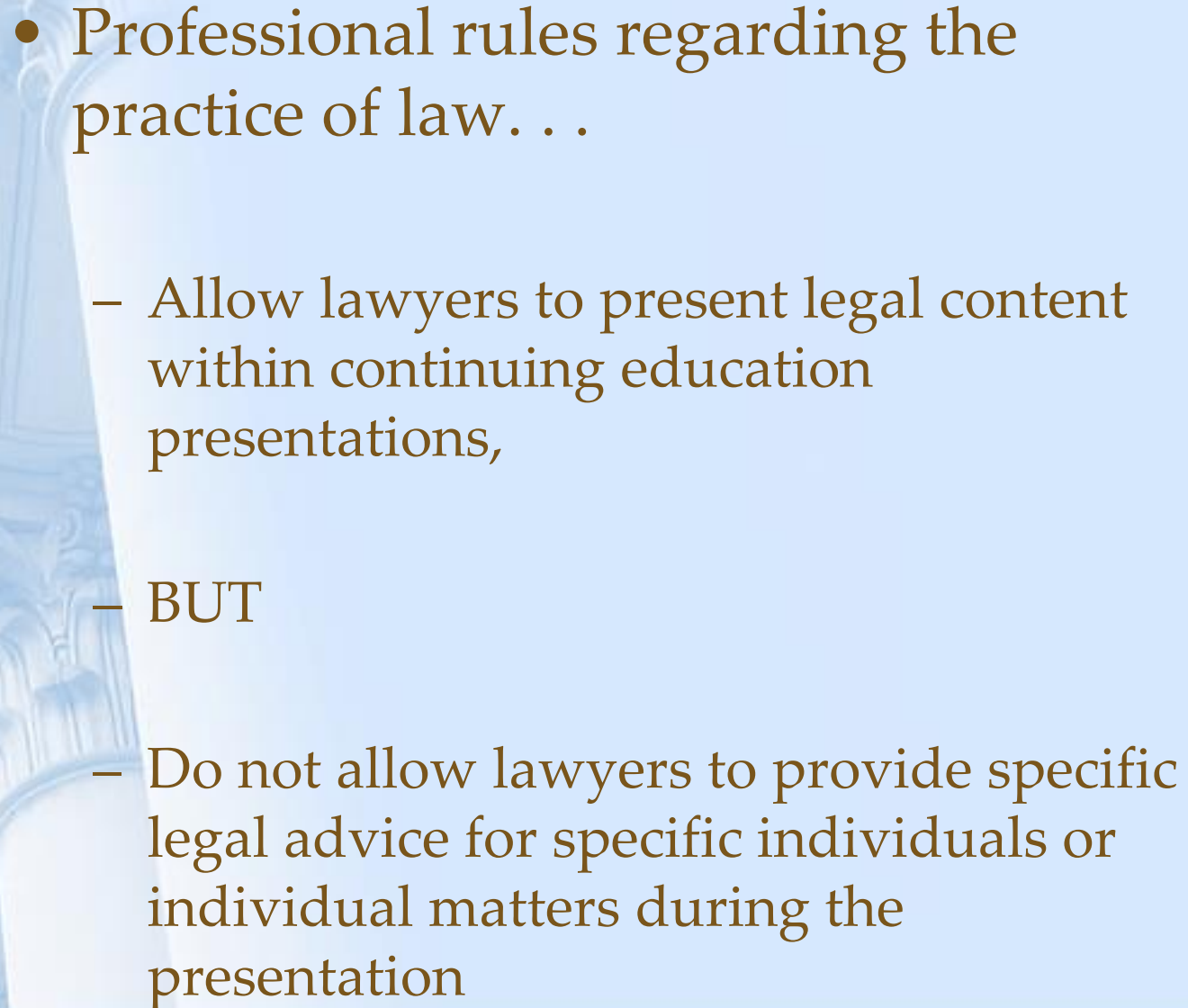
Legal Hot Spots in Nursing Education: High-Stakes Testing, Privacy and Disability Accommodation 2017

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Disclaimer

- The information contained within this presentation is intended solely to present an overview of applicable legal principles within nursing education.
- Absolutely **no legal advice** is being provided from this presentation and **no attorney-client relationship** has been formed.

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- Professional rules regarding the practice of law. . .
 - Allow lawyers to present legal content within continuing education presentations,
 - BUT
 - Do not allow lawyers to provide specific legal advice for specific individuals or individual matters during the presentation

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Program Content

- Present legal aspects associated with very difficult legal areas of practice as a nurse educator
- Based upon experience as lawyer, nurse, speaker, there are many!
- And then I started preparing for this presentation!!

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Program Focus

- 1) Examine the fair and ethical use of standardized testing in nursing education.
- 2) Explore various aspects of student privacy as it impacts nursing education

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Program Focus, Continued

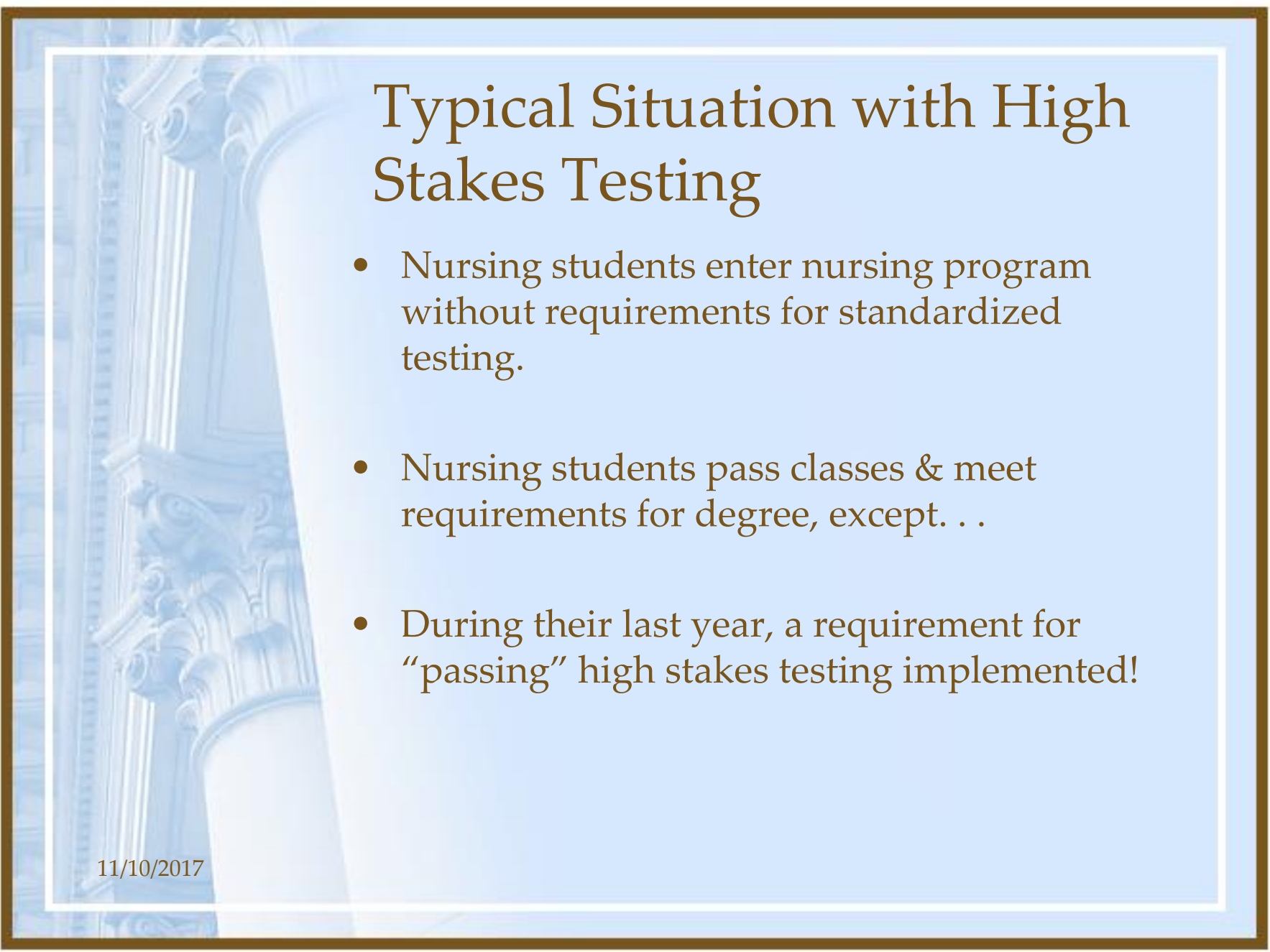
- 3) Identify current parameters of providing student accommodations in nursing education.



- Objective #1:

Examine the fair and ethical use of standardized testing in nursing education

Problem? No problem?
Area of litigation? (YES)

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Typical Situation with High Stakes Testing

- Nursing students enter nursing program without requirements for standardized testing.
- Nursing students pass classes & meet requirements for degree, except. . .
- During their last year, a requirement for “passing” high stakes testing implemented!

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What are the issues?

- Students cannot graduate
- Students cannot write NCLEX
- Students cannot start employment
- Parents become involved
- Threaten (or start) legal action

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Fair & Ethical Use of Standardized Testing

- What's the difference between
 - Standardized testing
 - A test administered and scored in a consistent (or “standard”) manner
 - High quality psychometric analytics
 - Low stakes testing
 - Measures academic achievement
 - High stakes testing
 - A test with important consequences for the test taker.
 - Passing/failing the test will have significant consequences.

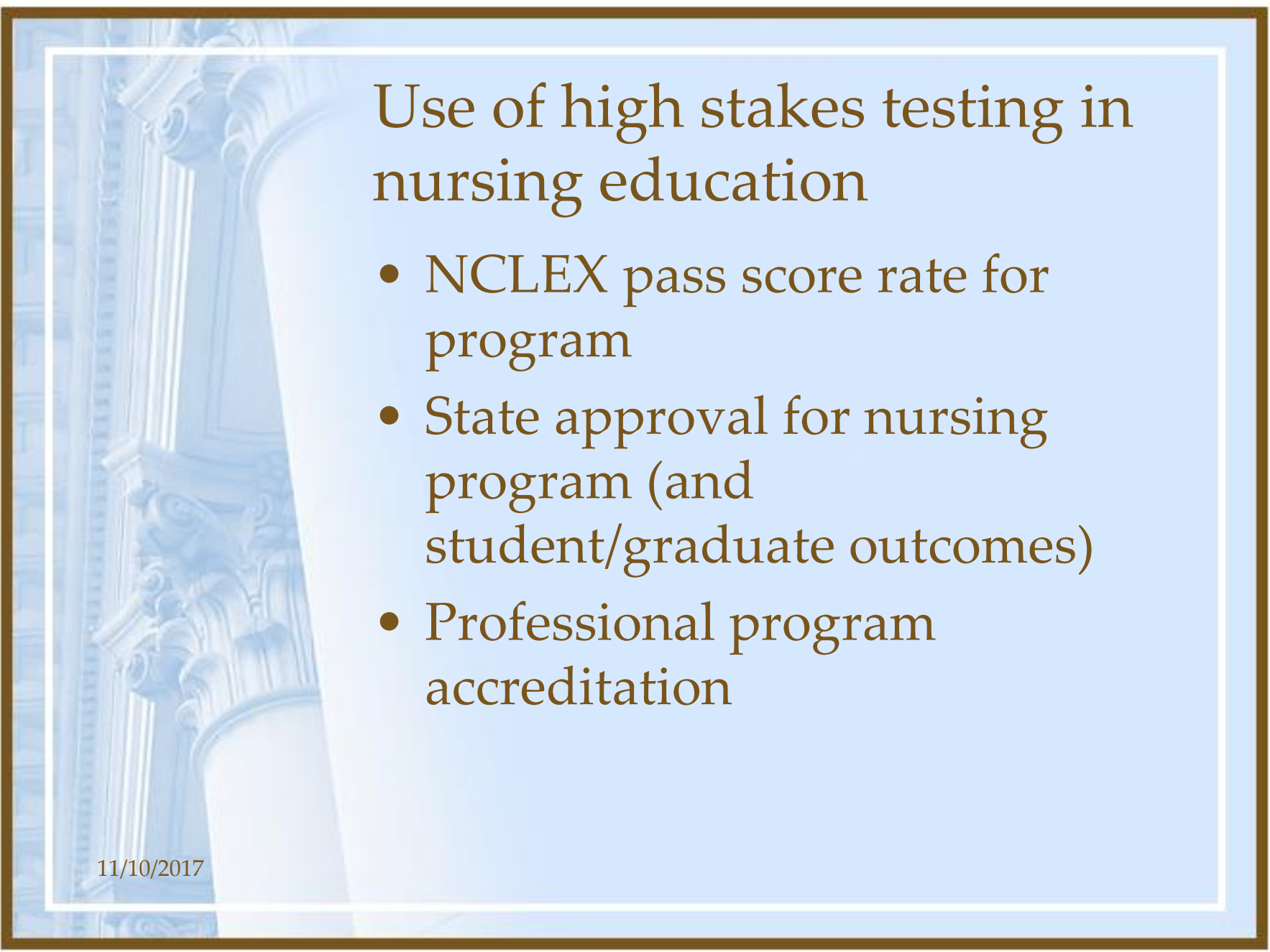
Comparison of Uses

Low-stakes testing

- Identify at risk students
- Establish student learning plans
- Curriculum change
- Program assessment & revision

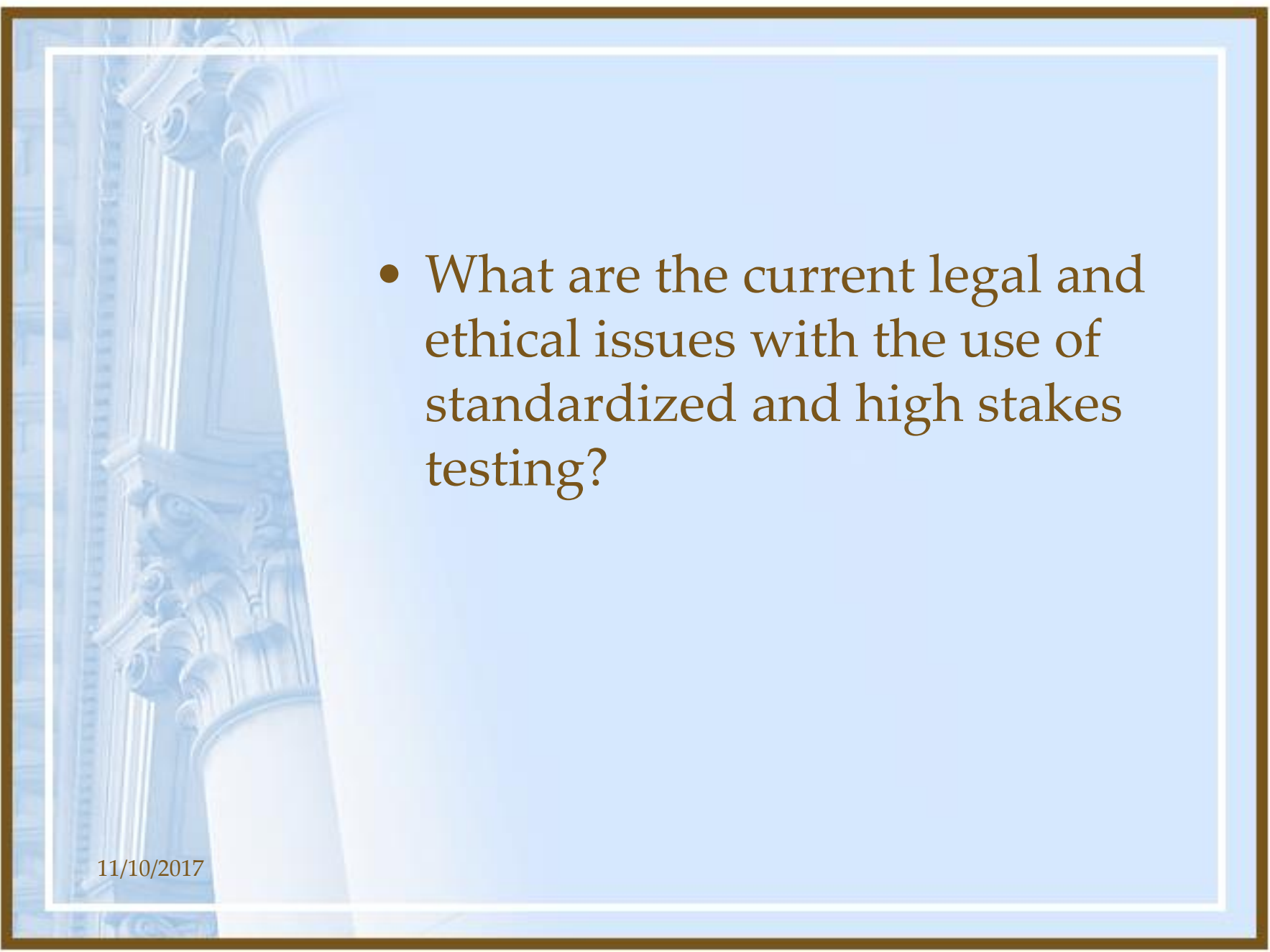
High-stakes testing

- Student progressing
- Graduation
- Licensure
- Certification
- Teacher evaluation
- Program evaluation

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Use of high stakes testing in nursing education

- NCLEX pass score rate for program
- State approval for nursing program (and student/graduate outcomes)
- Professional program accreditation

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- What are the current legal and ethical issues with the use of standardized and high stakes testing?

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Legal Cases Focused on High-Stakes Testing

- Initial court cases dealing with high stakes testing sided with the students.
- Period of time that courts generally sided with nursing programs regarding high-stakes testing
- Now..... Whether court sides with students or nursing programs depends on various factors

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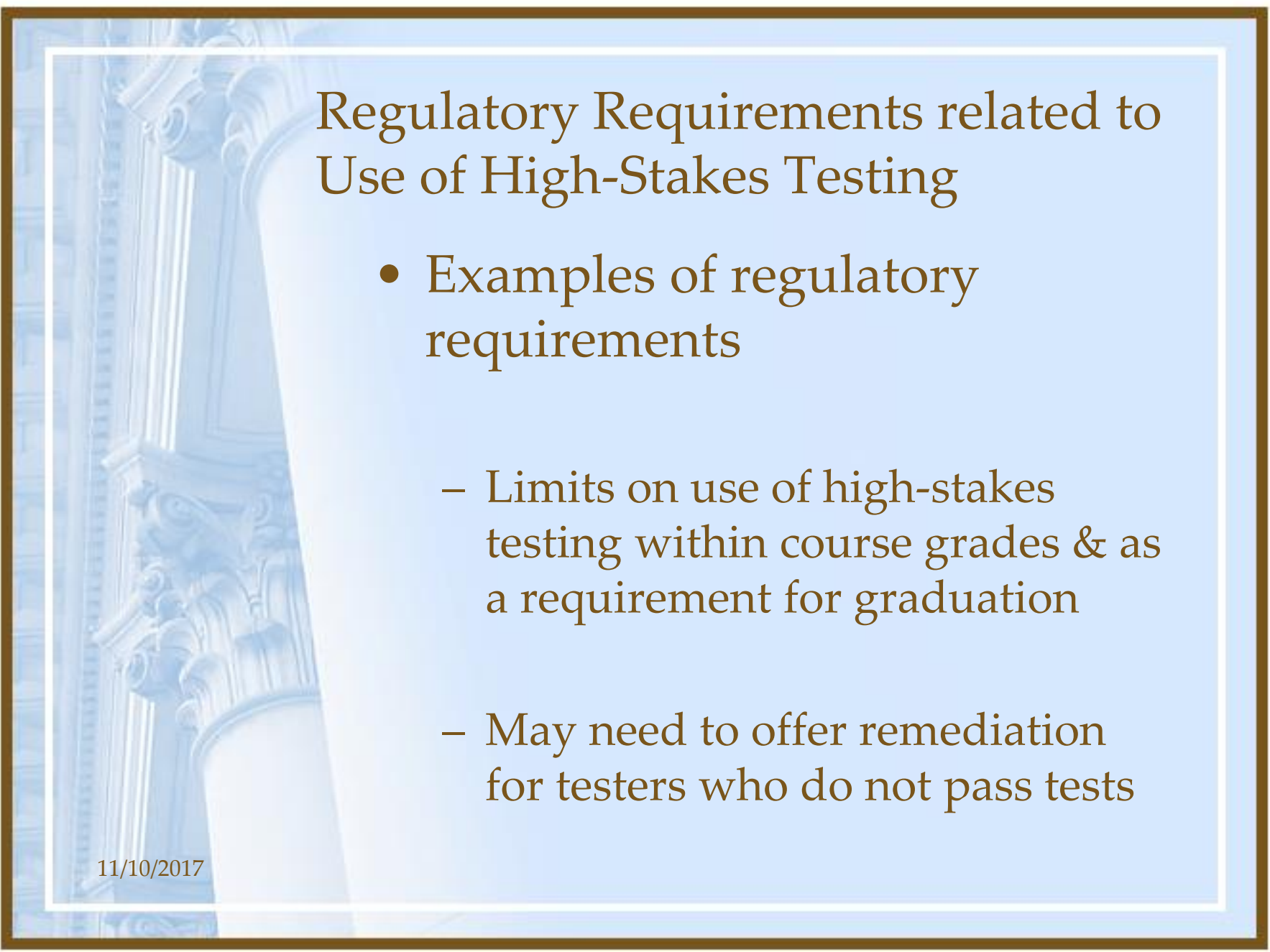
Specific Case Law

Case outcomes depends upon:
date of case,
jurisdiction of case,
applicable regulations &
any state “laws”
as well as other specific
case facts.....

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What factors will the court review?

- What are the consequences associated with the test scores?
- Does the tester have the opportunity to retest? Remediate?
- Is the specific test appropriate for the specific use? Psychometrics?
- What legal & regulatory guidelines apply?

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Regulatory Requirements related to Use of High-Stakes Testing

- Examples of regulatory requirements
 - Limits on use of high-stakes testing within course grades & as a requirement for graduation
 - May need to offer remediation for testers who do not pass tests

Persuasive Standards

- National League for Nursing
 - Fair Testing Guidelines for Nursing Education
- Texas Board of Nursing
 - 2.7.4.a. Education Guidelines using Standardized Examinations
 - Does not recommend the use of standardized examination as “high-stakes tests”
- Minnesota Board of Nursing
 - Endorses NLN Fair Testing Imperative

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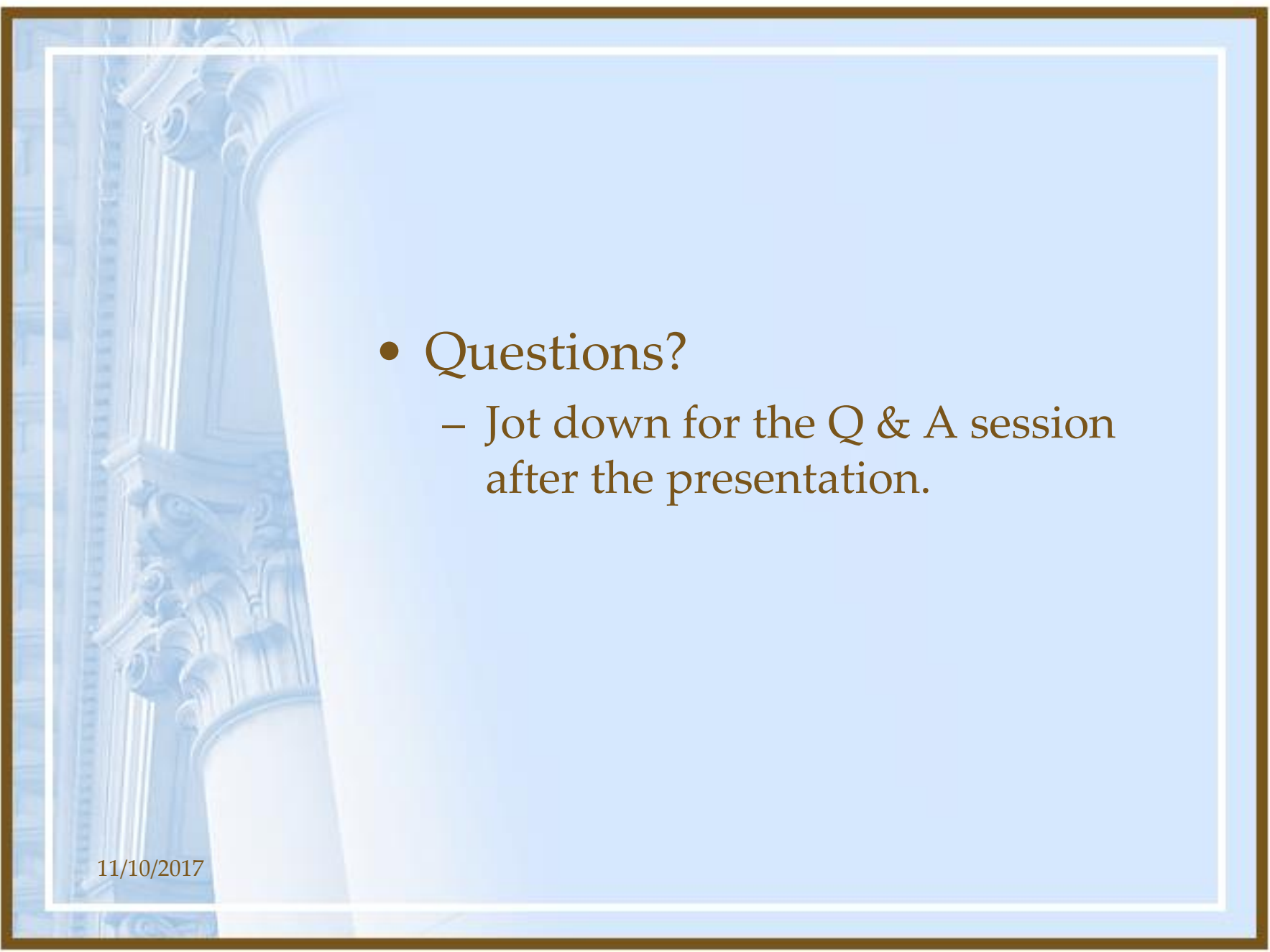
Typical High-Stakes Issue Outcome

- Students complain
 - School may or may not vary requirements OR
 - Provide for remediation and/or retesting
 - No legal action is filed
- Students file legal action
 - Outcome variable on many factors

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Summary Points to Consider

- What is allowed from a legal perspective in your jurisdiction?
- Does your nursing regulatory board have requirements?
- How is standardized testing implemented in your program?

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- Questions?
 - Jot down for the Q & A session after the presentation.

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Objective #2:

Explore the various aspects of student privacy as it impacts nursing education

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Student Privacy & Nursing Education

- First consideration with privacy is . . .
 - Federal Rights and Privacy Act (FERPA)

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FERPA

- A federal law
- Protects the privacy of student educational records
- Aspects for K-12 (with parents and students)
- Aspects for college & adult students

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FERPA

- Student right to review education records.
- Right to request amendment to record, if students believes it is inaccurate
- Right to file a complaint with US DOE
- Specifies what types of education records need student consent for release


FERPA – Types of information release not requiring student consent

- In connection with financial aid requirements
- Accreditation requirements/functions
- Health or safety emergencies
- Lawfully issue subpoena
- To other school officials (inc. teachers) who have a legitimate educational interest.



Faculty Access to Student Information

- What student information does the faculty
 - Have access to?
 - Have a right to have access to?
- How can student information bias the faculty and hurt the student?

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Who has a “legitimate educational interest?”

- Faculty within a course?
- Faculty from course to course?
- Faculty to Director/Dean?
- Faculty to Student Health?

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Additional Faculty Privacy Concerns

- What type of communication method is the faculty using?
- What is appropriate? Secure?
- How can objective v. subjective student data be harmful?

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Student Issues with Privacy


- Student Use of Social Media
 - Breach of client privacy with social media
 - Libelous statements made by students with social media
- Student Use of “Public Media” such as “Rate my Professor”
 - Issues?

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Legal Aspects of Privacy Violations

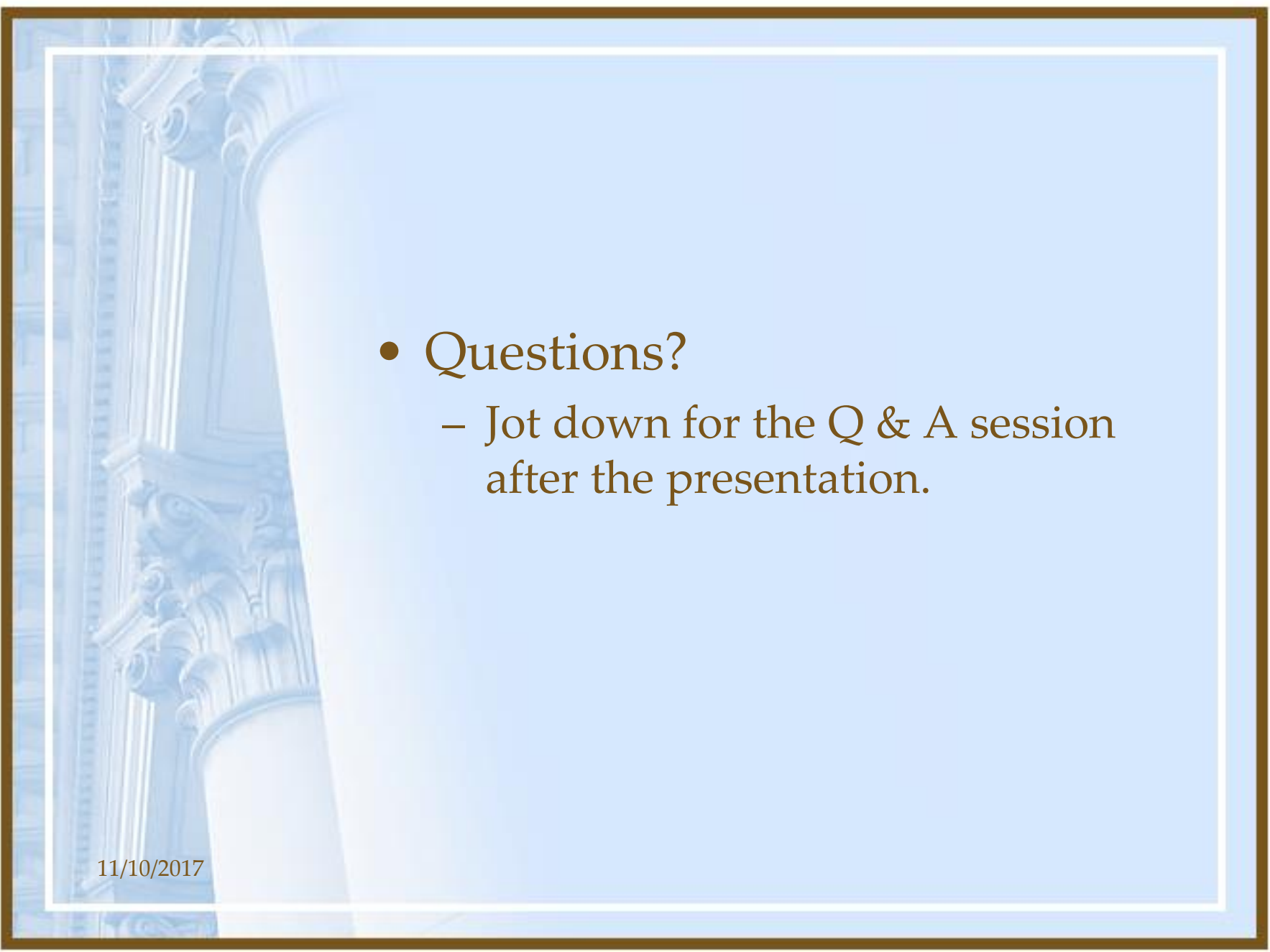
- Violation of FERPA
- Violation of Client Data
- Slander/liable
- Social Media Issues

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Best Practices related to Privacy in Nursing Education

- Be aware of legal requirements
- Have clear privacy policies
- Maintain adherence to policies

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- Questions?
 - Jot down for the Q & A session after the presentation.

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Objective #3

Identify current parameters of providing student accommodations in nursing education.

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ADA and Nursing Education

- What is ADA?
- What is considered a disability according to ADA?
- What is not considered a disability according to the ADA?



ADA Requirements

- Americans with Disabilities Act
 - Prohibits discrimination for those that are otherwise qualified
 - Applies to employment, public services, public accommodations, education, etc.

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ADA and Nursing

- ADA (1990)
 - Nursing initially focused on functional abilities/core performance standards
 - E.g.
 - Ability to hear, see, smell, touch
 - Ability to stand on feet for 8-12 hours

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What is a disability?

- Physical disabilities
 - E.g. Missing limbs; mobility problems; impaired sense; presence of disease/disorder (e.g. AIDS)
- Mental disabilities
 - E.g. ADD, Learning disabilities
 - E.g. Stress (?) (Service animals for anxiety)

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What is not a disability?

- English as a second language
- Psychoactive substance use disorders resulting from current illegal use of drugs
- Normal pregnancy
- Right/left handedness

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What are the requirements for accommodations?

- Requires reasonable accommodations for those who are otherwise qualified
 - Limitation for hardship (employer/school can clearly demonstrate that reasonable accommodations would impose an undue hardship)
 - Reasonable accommodations is a **Key Element!**

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What are reasonable accommodations?

- Colleges are NOT required to lower or effect substantial modifications to essential requirements
- Colleges are NOT required to provide personal care attendant services, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature



ADA and Nursing Education

- Essential functions
 - An employment term
 - Initially used in nursing education to address disabilities
- Technical standards
 - Detect a heart murmur (versus hear a heart murmur)

ADA Requirements

- Must make reasonable accommodations for those that are otherwise qualified.
- Questions to ask:
 1. What are the essential requirements of the program?
 2. What constitutes a direct threat?
 3. What would be unduly burdensome?

Student Disabilities

- What does A.D.A. mean to nursing programs?
 - Any otherwise qualified individual should receive reasonable accommodation with the educational program & any physical barriers must be removed (architectural, communication, or transportation)
 - Key: **otherwise qualified** (is the issue a qualified disability?)
 - Deaf applicant?
 - Auditory schizophrenic applicant?
 - Key: **reasonable accommodation** (according to resources & skills required)
 - Interpreter for every class?
 - Audiotape books?

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Examples of Reasonable Accommodations

- Individual born without a left hand applies to nursing school.
 - Can she meet the essential requirements of the program?
 - Is this “disability” a direct threat to anyone (e.g. patients)?
 - Is the proposed accommodation unduly burdensome?



Examples of A.D.A. Accommodations in Nursing Education

- BSN Student totally “wheelchair bound”
 - Admitted, accommodations made
 - Student successfully completed BSN program & obtained employment
- BSN Student totally “deaf”
 - Admitted, accommodations made
 - Student successfully completed BSN program & obtained employment
- Key: What accommodations were reasonable?

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ADA & Health Care Education

- Dental school applicants with hepatitis B virus infection not allowed into school. Student files complaint regarding Mental health disability and leave policy of university that was restrictive.
- Blind med school applicant accepted with disability.

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Best Practices in ADA Accommodations in Nursing Education

- Remember the questions to ask.
 1. What are the essential requirements of the program?
 2. What constitutes a direct threat?
 3. What would be unduly burdensome?



Questions?

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