

Legal, ethical and professional issues in nursing



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Critically analyse how ethical, professional and legal issues underpin nursing practice.

1. Introduction

Ethics regards standards of moral judgement and professional conduct.

Nurses are highly accountable to patients, the public, employers, and the entire

profession. It is imperative they have a sound understanding of various ethical, legal and professional issues they will face during their careers.

There

are three primary duties for nurses, among many others, which are the duty of autonomy, confidentiality, and duty of care to all patients. ⁱ These duties are supplemented by the principles of beneficence, meaning promoting or doing

good and acting in patients' best interests, and non-maleficence, meaning to avoid harm. ⁱⁱ These are professional duties which become legal duties if any legislation or policies are

breached during practice. In 2001 a study found that there was a perceived need for more advice on ethical dilemmas within the health profession, after

increasing legal cases and public inquiries. ⁱⁱⁱ As a result, various Clinical Ethics

Committees (CECs) and Research Ethics Committees (RECs) were established within the UK to provide comprehensive ethics support.

Constantly changing values

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in health, behavioural science, and society mean that medical practitioners must be aware of new ethical issues for the medical sector, and learn how to respond appropriately.

2. Regulatory Bodies

The nursing practice upholds its own code of ethics and this is regulated by strict disciplinary guidelines, with the governing body having more influence over its member than legislative entities in medical matters. The Department of Health issued a Health Service Circular 219. 99, which mandated some requirements of a new nursing education programme. In the Nursing and Midwifery Order 2001, the Nursing and Midwifery Council (NMC) must establish minimum standards and requirements for nursing education in professional and ethical issues. ^{iv} The NMC

is an organisation established by parliament to protect the public and regulates the medical and nursing professional standards using the Register of

Medical Practitioners (RMP). The Register acts to allow the GMC to monitor entry to the profession only by achieving the standards required to become an

RMP, and also by monitoring 'fitness to practice' proceedings to ensure all practitioners maintain consistently high standards of conduct. The

NMC contains guidelines regarding the expectations of particular duties such as confidentiality, medical research obligations, consent rights, and

autonomy. The nursing practice is expected to comply at an individual level with these guidelines on a daily basis. The NMC's ' Code of

Professional Conduct: Standards for conduct, performance and ethics' is widely adhered to in the profession. To be registered, it is a general rule

that nurses must undergo education in addition to personally indicating through performance and training that they intend to follow ethical standards to

retain a licence for nursing. ^v

The General Medical Council (GMC) is a statutory entity with the role of protecting the public by maintaining a register of medical practitioners fit to practice, while also monitoring complaints about practitioners. There are fourteen key concepts which outline the ethical standards and responsibilities

expected of a doctor. The GMC has also provided guidance on particular areas such as consent, confidentiality, and withholding or withdrawing treatment. ^{vi} This guidance is not mandatory, but is recognised at law, and in the case of *W v Egdell* , the court referred to the GMC guidelines on confidentiality. ^{vii} The

British Medical Association (BMA) is the national association of practising doctors, with its own medical ethics unit which deals with individual ethical queries from doctors and nurses, and provides guidelines on ethical issues. Together, the GMC and BMA act to provide guidance for nurses and other practitioners to assist in ethical decisions, however it should be noted that these decisions are highly personalised, dependent on the patient and situation, and often subjective therefore unable to be entirely answered by these guidelines.

Given that the duty of confidentiality is a combined public interest and individual interest assessment, the judicial system does not provide ample guidance. This creates a problem for nurses and the ethical questions about who to protect. The GMC acts to protect practitioners who breach confidentiality rules if it was in the public interest, although this depends on the circumstances. The GMC will be unable to protect nurses if disclosure amounts to a significant breach towards the particular individual, despite assessment of legal and ethical questions.^{viii} While case law often determines the 'public interest' query, individual practitioners and nurses must still exercise professional judgment and are personally accountable for any decisions which may breach ethical standards.^{ix}

However, the ethical guidelines are not entirely subjective, and the NMC regulates the code of ethics which enforces all disciplinary processes for practitioners. The NMC states that patients can expect professionals to consider all information confidential to enhance trust, and no information can be

disclosed without consent other than in exceptional circumstances. ^x Nurses are also under

instruction from doctors and employers, required to exercise their own judgment as well as following directions and adhering to the ethics of the team and

the Code of Professional Conduct for Nurses. ^{xi} This can lead to some conflict, where they

may be instructed to act contrary to their own personal beliefs, hence a balance of opinions must be applied by the individual to ensure they continue to

act in the patient's best interests while following ethical obligations.

Additionally, nurses are expected to work together with other health

practitioners and care professionals or agencies, service users, carers and communities, and extended families, to ensure decisions made about patient care

adhere to shared values. ^{xii}

3. Legal Issues in Nursing

The current legal framework in the UK includes statute law and case law.

There are also some jurisdictional differences within the UK with Scotland and

Northern Ireland having separate legal systems. ^{xiii} For instance, in Scotland a person can

appoint an attorney of welfare to make medical treatment decisions if that person becomes incompetent, under the *Adults with Incapacity (Scotland) Act 2000*, yet this is not an option in England. There is a range of statutes impacting health care in the UK, as

well as international standards. These include the *Abortion Act 1967*, the *Mental Health Act 1983*, the *Data Protection Act 1998*, *The Children Act 1989*, various Acts relevant only in Scotland, and guidance such as the *Guidance for Access to Health Records Requests* provided by the Department of Health. Particular examples of these acts include the strict control

of disclosure of personal information under the *Data Protection Act*, and the concurrent use of the *Public Interest Disclosure Act 1998* if

nurses are concerned about confidentiality decisions made at executive levels in organisations. The *Human Rights Act*, Article 8, also allows

people to take action against public authorities who have not upheld their right to a private life. ^{xiv} When read with Article 3, it can be implied that there is a fundamental right for all

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individuals to determine their own lives, without interference from the government, including the right to choose medical treatment – treatment must

be either consensual, or if the patient is in fact incapable of consent, it must be therapeutically necessary. ^{xv}

Case law is the second branch monitoring ethical standards in nursing and the medical profession. Various prominent medical cases have been heard recently,

in particular relating to nurses assisting suicide, the refusal of medical treatment by a patient who is competent, and using embryos frozen for IVF.

^{xvi} In England, nobody can consent to treatment for an incompetent adult, so the Court must

make a declaration in the best interests of the patients and the overall medical practice. However, before reaching litigation, it is often expected that

nurses are competent in making these decisions and informing their supervisors and subsequently the court regarding patient consent. ^{xvii} Nurses require a sound understanding of the associated ethical and legal principles in

order to make such a judgment, and this is best understood by implementing stringent teaching and education procedures prior to practicing in a health clinic to ensure they can apply principles of health care and ethics.

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In England, a patient is considered a minor if he or she is under 18 years of age, although in Scotland the required age is lower at 16. In England and Wales, the *Family Law Reform Act 1969* states that a person who is 16 or 17 years old has a statutory right to consent to treatment, under section 8, a minor aged 16 or over is considered an adult and has the legal rights which flow from this categorisation. The consent must be effective, and then no consent is required from a parent, except in specific procedures such as organ donation and nontherapeutic research. ^{xviii} The consent is valid if the minor is of 'sufficient intelligence and understanding to appreciate the information and advice about the treatment and what it involves,' for instance if a teenage girl consent in receiving contraceptive advice without her parents' knowledge or consent. ^{xix} As the law enforces a duty of confidentiality by nurses to adults, the law then extends the duty to children who are competent in consenting to treatment. Knowledge of these circumstances is integral in enabling nurses to perform their roles following ethical standards.

The most common reaction to a perceived breach of ethical standards in the health profession is an action in negligence and malpractice, being the act or

omission or commission made by the nurse or doctor. ^{xx} It requires four elements: duty, being

a legal obligation owed to the patient – nurses must provide the degree of care reasonably exercised by other nurses in that practice area. Second, a breach of that duty by not meeting the required standard. Third, causation, which is a factual connection between the action of the nurse and the harm suffered by the patient. Finally, damages, being monetary payment intended to compensate the patient for the detriment. ^{xxi} The patient must have suffered bodily, economic, or emotional injury. The breach of duty

test refers to the reasonable judgments of ‘ responsible bodies of medical opinion,’ where those of special skills or competence are judged at a

higher standard for that profession, rather than the ordinary person test. ^{xxii}

The standard

of care is also higher for professionals, and while the primary duty is with the doctor, nurses can also be held liable even when acting under direction

from her employer. ^{xxiii} The nurse, even when supervised, must exercise her own skill and

competence as expected of a nurse of the same level and experience. ^{xxiv}

4. Confidentiality

The principle that a patient who understands relevant information regarding his or her medical problem should be able to make a decision about treatment

extends to the duty conferred on doctors and nurses. This is a duty of confidentiality, to not give information about the patient to others without consent. The patient must be considered competent to make the decision, as in other circumstances a breach of confidence may be permitted.^{xxv} The principle of autonomy for competent individuals then implies that confidentiality

must be respected. In some circumstances, complying with requests for confidentiality may be detrimental to the patient – which is the best interest principle and nonmaleficence conflicting with the right to autonomy.^{xxvi} The nurses must

carefully assess the possible consequences of breaching confidentiality, considering the risk of harm of not breaching which must be significant to justify

ignoring the concept of autonomy. The GMC guideline for confidentiality allows disclosure under Paragraph 27 where: ‘ disclosure of personal information without consent may be justified in the public interest where failure to do so may expose the patient or others to risk of death or serious

harm.’^{xxvii} Discussion regarding confidentiality must be informed by ethical principles following case law and legislation, in addition to guidance policies, and any on-job learning which may be applied to independent cases.

Confidentiality is further governed by the *Health Insurance Portability and Accountability Act 1996*, which outlines the requirement to protect

distribution of confidential information on patients.^{xxviii} This mandates the need to reduce

online systems tracking, monitoring login systems and monitoring confidential information distribution. Password systems are tracked to ensure hospital

employees cannot access patient files without consent. A recent example is the event at the Moffitt Cancer Centre, after it came to light that a research

study falsified patient consent.^{xxix} Hundreds of documents were fraudulently produced during

a cancer research study, which breaches the duty of a nurse to obtain an informed consent signature before conducting a procedure.^{xxx} The signature implies that the patient is aware of the procedure, its alternatives, and

possible risks, so when a nurse does not obtain the signature and falsifies it, the employer and the nurse are both accountable for damages.^{xxxi}

The right to confidentiality has been supported judicially in several prominent cases, including *Hunter v Mann* [1974] QB 767, *W v Edgell* [1990] <https://assignbuster.com/legal-ethical-and-professional-issues-in-nursing/>

Ch 359, and in *X v Y*[1988]. In the latter case, the court stated that ‘ the doctor has a duty not to voluntarily disclose without the consent of his patient information which he has obtained in his professional capacity, save in exceptional circumstances’ (at [23]). These circumstances are when there is a competing public interest, and the case went on to outline: ‘ cases may arise in which disclosure in the public interest may be justified, such as a situation in which the failure to disclose appropriate information would expose the patient, or someone else, to a risk of death or serious harm’ (at [25]). In that case, Justice Rose reiterated that an AIDS case involved a significant public interest, but also a fundamental right to individual confidentiality. While the public had an interest in publication of the matter, it was held that it did not outweigh the right to confidentiality in the medical context, in particular regarding an AIDS patient. Justice Rose stated: ‘ the public in general and patients in particular are entitled to expect hospital records to be confidential, and it is not for any individual to take it upon himself or herself to breach that confidence whether induced by a journalist or otherwise’ (at [35]).

5. Autonomy

Nursing ethics revolves around the concept that nursing is collaborative, hence patients have an inherent right to bodily autonomy wherever possible, and

this includes a human rights component and the need to allow informed consent, or the withholding of this consent. The law of informed consent underlies

the ethical notion of autonomy, outlining the minimum standard of behaviour accepted by the community. ^{xxxii} Compliance with legislation is mandatory, whereas compliance with the ethical notions

of autonomy must be applied at a personal level within the nursing practice.

For example, in the UK, the evolution of the *Mental Capacity Bill* highlights the public's belief that patients have the right to make their own treatment decisions. Contrastingly, the *Human Fertilisation and Embryology Act 1990* is applied by the courts strictly, for instance in the interpretation of the word

'embryo', which limits the autonomy on a legislative basis. There are also conflicts within ethics and autonomy, for instance the issue of

parental choice in the 'saviour sibling' debate may not adhere to overall societal benefits, including the ethical duty to act beneficently

towards all children, including future children. ^{xxxiii} These are particularly sensitive

issues which require subjective personal judgment of nurses involved.

Generally, nurses must comply with patient request even if they do not personally

agree, and ensure that in the nature of justice, all clients are treated fairly and equally, for instance regarding distribution of hospital resources and

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time spent per patient. ^{xxxiv}

Autonomy, and by extension consent, can be both legally and ethically ‘effective’, depending on context and the patient circumstances. From a health sector perspective, autonomy may or may not be practical for the purposes of precluding liability from litigation and avoiding ethical criticism, weighed against the best interests of the patient. ^{xxxv} It may also be that the patient does

not have the requisite decision-making capacity, in which case nurses may treat the patient without consent. This is usually grounded on the principle of necessity, and the circumstances in which it is permitted are limited. ^{xxxvi} It must be

proven as necessary to treat the patient, and in addition the necessity to act was coupled with it being impractical to communicate with the patient, and the action taken was that which a reasonable person in the same circumstances would take if acting in the patient’s best interests. ^{xxxvii}

Further, when acting under necessity, the nurse must prove she did no more than was

immediately necessary and in the patient’s best interests. ^{xxxviii} The question of what

is immediately necessary, not acting further and in breach of patient autonomy, is not legislated and remains an ethical dilemma in the nursing practice.

6. Conclusion

Legal and ethical issues are prevalent in the health care industry, and in particular for the nursing practice, where nurses have daily individual contact

with patients. Ethical issues are wide-ranging, from organ donation, genetic engineering, assisted suicide, withholding treatment in end-of-life care, or simple procedures requiring consent. Many nurses do not have formal education in legal and ethical issues, and as such as often unqualified to address

these questions when they arise in the medical environment. ^{xxxix} While there are legal,

ethical and professional guidelines which mandate the conduct of professionals, it does require education in the area and an ability to be aware of the

risks of any personal decision made regarding a patient. Nurses must be guided in learning about ethics within their profession to ensure mistakes to do

not occur. As nurses have contact with patients on a daily basis in dynamic environments, ethical issues vary based on patient profiles, medical technology

development, and healthcare specialties. Awareness of ethical problems involves rational reflection of what action should be taken in particular scenarios,

and adhering to principles guiding this behaviour. Nurses are influenced by professional, personal, cultural, social, and political factors. The

fundamental responsibilities of all medical practitioners remains constant, being to promote health, act in the best interests of the patient, prevent

illness, remove suffering, and extend services beyond the individual to their family and the community.

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