

# Ethics and law in nursing essay sample



**ASSIGN  
BUSTER**

It is not unethical, unprofessional or unlawful to administer medication covertly in certain circumstance. As long as guidelines have been followed in accordance with the Nursing and Midwifery Council (NMC) (2008) and The Mental Capacity Act (2005). In this essay I shall look at the importance of being accountable for one's actions and then demonstrate how to possibly establish if an action is unethical, unprofessional or unlawful. I will then define the theories and principles of ethics and then explore the NMC (2004) A-Z advice sheet on administering medicine covertly.

Furthermore I shall argue how the nurse could justify her action encompassing two of the ethical principles. Equally I will consider Mrs Reid's possible reaction, if she discovered her medication was being administered covertly and the implications of this. Finally I will explore the legal aspects of this case study and then conclude. According to Handy (1997) as cited in Cuthbert and Quallington (2008) working in teams and small groups can cause individuals to follow the actions and behaviours of the team, because everyone else is doing it.

Mrs Reid is an elderly women who is possibly vulnerable and although other nurses have been crushing the medication in a glass of orange juice without her consent. It is imperative as a Nurse to be accountable for ones actions and not do anything that undermines ones ethical and professional values or is unlawful. Because it could lead to being struck off the NMC register and could also result in legal action being taken against the Nurse. So how does a Nurse establish if an action is unethical, unprofessional or unlawful?

According to Hope et al (2008) Ethics is about how a person should act or think.

However, according to Tschudin (2003) this can be based on one's social, religious and cultural beliefs and these beliefs can vary, depending on what group one belongs to. For example a Nurse that is a Catholic may believe it is unethical to have an abortion. But the law states this procedure can be performed under certain circumstances, which means the law overrides ethical decisions. Therefore if individuals have different belief systems, and what may be right to one individual may be wrong to another, consequently there has to be a regulatory body that can be consulted to help determine that an action contemplated is ethical.

The NMC code of conduct provides a guideline to ethical decision making and the standards of professionalism that are required by nurses. Also the Nurse's contract of employment, the hospital's policies and procedures or consulting a legal advisor can help when determining if an action is ethical, professional or indeed unlawful (Mayberry 2003). There are also theories of ethics such as Deontology, Consequentialism and Virtues. According to Herring (2006) Deontologist believes actions to be right or wrong based on duties or obligations regardless of the consequence.

Consequentialism considers that an action is ethically right or wrong based on the outcome. Virtue based ethics emphasises the individual's moral character such as honesty and integrity rather than actions based on duty or the consequences of an action. Some of the underlining principles of these theories according to Fry and Johnstone (2008) are; autonomy – the right to be independent and make choices. Veracity – truthfulness. Justice – treating everybody equally according to their individual needs. Beneficence – to do good and non-maleficence to prevent harm.

According to Beauchamp and Childress (2009) no matter what cultural, religious or social group an individual belongs to they can commit to these principles. The ethical principles will be discussed in relation to the case study later. The main issues in this case study is; should Mrs Reid's right to autonomy and consent to treatment be respected? According to the NMC code of conduct (2008) informed consent should be ascertained before performing any form of treatment and the patient's right to accept or refuse treatment should be respected.

This is also echoed in the NHS 2000 plan on consent where it states that a patient with capacity has a right to refuse treatment (Department of Health 2009). If Mrs Reid is competent and has all the necessary information on the side effects of the medication and the benefits, then the ethical principle of autonomy applies because a decision to make a choice with regards to one's own healthcare should be supported and respected. (Schwartz et al 2002). However, The NMC (2004) A-Z advice sheet on covert administration of medication states there may be exceptional circumstances when covert medication can be contemplated.

But it should only be done with the best interest of Mrs Reid and the medication must be necessary for her health or the protection of others. An open risk assessment needs to be carried out by the multi-disciplinary team which should include Mrs Reid's relatives/carers. The decision should be agreed by all and the names of all involved recorded in the care plan. The route and method of administering the medication should be discussed with the pharmacist. The decision to administer covert medication should not be

made by one person. Did the Nurse follow this guideline before administering medication covertly?

What justification could she have for not following the NMC A-Z advice sheet or respecting Mrs Reid's right to autonomy and consent? The Nurse could argue that if Mrs Reid does not have her medication she might try to get out of bed and cause her injury (fracture to neck of femur) to worsen and take longer to heal. Or the Nurse could think that if Mrs Reid does not have the anti-psychotic medication she could become confused and cause harm to herself or other patients. The nurse might think she is acting in the best interest of the patient and the principle of non-maleficence applies with regards to preventing harm.

The ethical principle of beneficence can also be considered, because the nurse could believe she is doing good by ensuring Mrs Reid takes her medication. At the time the nurse made the decision the disciplinary team might not have been available because of staff shortages. The nurse could believe that the principle of justice applies because it is unfair for the other patients in the ward to be disturbed or harmed by Mrs Reid and she could then be breaching her duty of care to the other patients.

The nurse has a duty of care to her patients in the hospital environment, however, if a person collapsed in the street, she would be under no obligation to help. If she did attempt to help, she would owe that person a duty of care. Duty of care in law occurs when an individual's action or inaction can possibly lead to harming someone (Herring 2006). But how could

Mrs Reid react if she found out the Nurse has been crushing the medication in her orange juice? Mrs Reid may feel as though she has been deceived.

This could lead to her not trusting the nursing team and this could manifest in refusing food and beverages. The consequence of this could result in Mrs Reid being malnourished and could lead to her demise. The nurse would then be in breach of non-maleficence. Disguising medication is deceitful and the nurse would not be honouring the ethical principle of veracity. According to the NMC (2008) it is imperative for a Nurse to be trustworthy and honest. The principle of justice requires a nurse to treat all patients the same whilst catering for there individual needs (Schwartz et al 2002).

Is it unfair for Mrs Reid's individual needs to be cast aside for the needs of other patients. With regards to the law one could argue there are many contravenes around the issues of consent and autonomy that are mainly covered in case law. For the purpose of this case study I will explore two statutory laws; The Mental Capacity Act (2005) and The Human Rights Act (1998) Article 8. The Mental Capacity Act (2005) section 1, states that every adult has the capacity and right to make there own decisions unless there is evidence to the contrary (Department of Health 2009).

Therefore Mrs Reid should be assisted in everyway possible to help reach a decision without being coerced and if the decision made by Mrs Reid is perceived unsuitable by the nurse it does not mean she lacks capacity. If she lacks capacity any action taken or decision made for her should only be done with her best interest and where possible options should be sought to not impede on her basic human rights. Section 2 states that a decision that

determines she lacks capacity should not be based on how she looks, her age or any unjustified assumptions about her behaviour.

The exception to this law is in an emergency situation where the person might die if treatment is not given (McHale and Tingle 2007). Is it lawful for a nurse to exclusively decide if a patient lacks mental capacity? According to the NMC (2004) A-Z advice sheet it is part of the Nurse's role to participate in discussions with the multi-disciplinary team concerning the assessment of a patient's mental capacity. However, it is usually a psychiatrist that will ultimately make the decision if a person lacks mental capacity and in some cases a court order has to be obtained.

The Human Rights Act (1998), Article 8: the right to respect for private and family life also includes the right to refuse medical treatment. Even if refusing the treatment may lead to the person's death, the individual's wishes have to be respected. It also states that only under certain circumstances this law can be overridden. For example, for the protection of the rights and freedom of others (Department of Health 2009). If both of these laws have been disregarded with or without a convincing justification it could lead to a criminal or civil prosecution.

For a criminal investigation to be pursued there are two tests. (1) The criminal act that has been committed and (2) Was the intention to harm or was it a mistake or reckless? A civil prosecution has three tests. (1) Did the person have a duty of care? (2) Was the duty of care breached? (3) Did harm result? (Herring 2006). If Mrs Reid or her family found out that she was given medication against her wishes could they take legal action against the

Hospital and the Nurse? Not complying with the hospital's policies and procedures on consent, could result in the nurse being liable.

In conclusion it would appear that the nurse's intention was to be beneficent, however the outcome could have resulted in a violation of non-maleficence. Moreover, according to Herring (2006) the principle of beneficent conflicts with the ethical principle of autonomy and in some respects can be construed as being paternalistic. Paternalism means not considering the other person's wishes, when making a decision for someone else. The Nurse's argument that Mrs Reid could injure herself, harm or disturb the other patients.

Could be rectified by placing a Healthcare Assistant to sit with Mrs Reid to ensure her safety and the safety of the other patients. The NMC (2004) A-Z advice sheet clearly states that the decision to administer medication covertly should never be made by one person. If the disciplinary team were not available due to a shortage of staff, then no action should be taken. The Nurse could have enquired with Mrs Reid or her family to see if she had previously been prescribed another medication for her condition that she preferred. Or the Nurse could have discussed changing the medication with Mrs Reid's Doctor and the pharmacist.

I have observed Nurses making this type of enquiry when I was on my student nurse hospital placement. Furthermore, when considering crushing medication a pharmacist should always be consulted. Tablets can have special coatings that cause them to be released fast or slow in the body. If the medication is crushed it can cause it to be released too slow and be non-



effective and if it is released too fast it could lead to a fatality (Nursing Times 2004). With regards to the law it has not been proven that Mrs Reid lacks mental capacity.

Therefore according to The Mental Capacity Act (2005) as a competent person her right to refuse medication cannot be overridden in her best interest and The Human Rights Act (1998) Article 8 also applies. So Mrs Reid or her family could take legal action, if they found out the nurse was administering medication covertly. Administering medication without the patient's consent can amount to the crime of battery (McHale and Tingle 2001). If I was in this situation I would respect Mrs Reid's right to autonomy and consent, based on the NMC ethical guidelines, the NHS policy on consent and the law.