



Fundamental aspects of legal, ethical and professional issues in nursing

3rd edition





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Note

Health-care practice and knowledge are constantly changing and developing as new research and treatments, changes in procedures, drugs and equipment become available.

The author and publishers have, as far as is possible, taken care to confirm that the information complies with the latest standards of practice and legislation.





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3rd edition

by

**Sally Carvalho, Maggie Reeves and
Jacquie Orford**





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Foreword

Being or studying to become a nurse can be a daunting challenge. There is just so much to consider, and so many different perspectives to balance.

Given all the uncertainties, it can be very tempting to pick up a rule book – the law, a Code of Practice, or a values statement, for example – and point to a section that seems to support your decision. Sometimes this will be enough, but mostly this strategy will fail to take sufficient account of the complexity and richness of daily nursing practice. As the authors rightly point out; in reality, legal, professional and ethical concepts are bound together like plaited hair. They also explain that values are fluid, Codes change, apparently new slogans like the 6Cs become popular and then go out of fashion – and in the end there is so much law, so many ethical principles and professional duties that it can seem impossible to use them to support sensible decision-making, because in practice they just don't fit together.

In the midst of such potential chaos, how can nurses make the best possible decisions each working day?

The authors advise paying close attention to the current NMC Code and the laws of the land, but more importantly they say that it is vital that nurses try to understand their own values and those of others, for it is only by looking honestly at what drives us that we can arrive at the most workable and thoughtful decisions.

For a nurse looking for certainty this may not at first seem like the best news: how can she possibly think so deeply throughout her routine day? But in fact it is a liberating insight: there are rarely absolutely right answers in ethics, no-one gets it perfect always (in truth, most people muddle through most of the time) and so long as you can show that you have considered at least some of the evidence, context, law and preferences in any situation, you will have done well enough.

The message I take from this book is that while there is guidance in law and professional practice, in the end the world is too complicated and uncertain to rely on this alone. It is only by recognising this that you can become the best nurse you can be.

I think the authors' most important observation is that few if any human beings are consistent in our beliefs and actions, and it is a big mistake to imagine we are. Of course, we tend to believe we hold particular values consistently – perhaps 'being honest', 'supporting others' decisions' and 'being respectful' – but sooner or later circumstances occur when these values become so difficult to apply that we do the opposite.





My partner – Vanessa – is resolute in the values she believes in, but one day was surprised to find that she was completely contradicting what she thought was her fundamental preference: the right to know – to be informed in order to make your own choices. As a nurse these values are quite basic to her philosophy of care, but as a mother it turned out that in some circumstances they can swiftly be ditched. We were on an Air Malaysia flight travelling from Kuala Lumpur to London, when one of the engines began to leak fuel. The captain explained that we would have to return and land in Kuala Lumpur, but first we needed to circle for an hour or so in order to ditch fuel so that we could land safely. Vanessa's son, Zak (then 11), was asleep all this time and – in order to protect him – she decided both not to wake him but also not to tell him anything about what was going on, should he wake. She simply could not bear to frighten him or to see him fearful so she withheld the information, in complete contrast with what she supposed her fundamental values were.

Think about your own values – big and small. Look back and see how they have changed as you have changed, and notice too that they have not changed spontaneously, but as the result of the complex backcloth to your life, your growing and the world around you changing and influencing you in fresh ways.

How can knowing this help us make good decisions?

The authors offer various scenarios to reflect on, for example:

'For several days, a 17-year-old patient has refused to eat and drink. When you ask her why, she says it is because of her religious principles.'

They ask you to think about this situation from various angles, because it looks like sooner or later you will have to make a decision: do you allow the patient to starve herself to death or do you try other ways to encourage her – or perhaps ultimately force her - to take food and fluids?

The authors suggest that elements of the NMC Code may be helpful. For example:

Clause 1 - Treat people as individuals and uphold their dignity.

1:3 Avoid making assumptions and recognise diversity and individual choice.

Clause 3 - Make sure that people's physical, social and psychological needs are assessed and responded to.

3:1 Pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people in all life stages...

Clause 4 - Act in the best interests of people at all times.

But of course, any thoughtful nurse will notice potential contradictions here, for instance 'respecting the patient's choice' and at the same time 'preventing ill health', so something deeper is eventually required.





This is not the place to explain specifically what this might be, but it is really important to note that the evidence alone – or even the evidence plus Codes plus law – is not always sufficient to make a good decision.

You can think of decisions as if they are bubbles, which pop in and out of existence. All decisions are partly logical and based on evidence, but are also formed from a sea of subtler influences, of which we are mostly unaware: our personalities, our histories, our environment, our culture, our peers, our families and friends, our work pressures and stressors, the political climate, our values – and all these change too. If we want to practice thoughtful health care, then we must always try to see both the logical parts of the decision bubble and the multiple life factors that have brought it into existence.

We can choose to see other people and their decisions positively or negatively, but what is certain is that there are reasons for their choices which – if we and they can comprehend them even just a little better – will help us appreciate them more deeply. We do not have to agree with their decision bubbles just because we may understand their causes a little better. We don't have to respect them and their decisions either. But we can look at them with more awareness, and maybe a bit more sympathy.

And this is the very first thing a good nurse should ask about the 17-year-old who refuses to eat: what factors have caused that decision bubble to bounce into existence? There will be many ways to try to find out, and once things have become clearer it is then possible – although rarely easy – to ask: given what I know about the factors that have caused this decision, how do I support the patient either to sustain it or to make an alternative one? This – coupled with a continuing awareness of your own values – is the true basis of the best nursing care under conditions of uncertainty.

To its credit, this new edition of *Fundamental Aspects of Legal, Professional and Ethical Issues in Nursing* offers many practical signposts to good practice, but does not claim these are always 'the answer'. Taken as a whole, this book shows the way to creative, autonomous, truly professional nursing. Even if different nurses come to different conclusions about the same case, if they have reflected sensitively on both the evidence and the less tangible factors involved, then this is the way good nursing should be.

Professor David Seedhouse
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Firstly, we thank the many students and colleagues with whom we have worked during our nursing and teaching careers. During this time, we have learnt how to answer questions and to find out answers, and to try to give these answers at the level the individual could understand. Students, in particular, have tested us to ensure that they have got the answer to their satisfaction and have challenged us with examples from clinical practice — some of which are included in this book. Without this learning, this book could not have been written.

Secondly, we thank those who have offered advice and information over the years and have contributed to our knowledge. Our specific thanks go to Professor David Seedhouse for writing the Foreword to this edition, and all the other authors acknowledged through the text.

Sally Carvalho, Maggie Reeves and Jacquie Orford



Chronological table of statutes

Offences Against the Person Act 1861
Homicide Act 1957 Suicide Act 1961
Abortion Act 1967
Family Law Reform Act 1969
Misuse of Drugs Act 1971
Health and Safety at Work Act 1974
Nurses, Midwives and Health Visitors Act 1979
Mental Health Act 1983
Public Health (Control of Diseases) Act 1984
Hospital Complaints Procedure Act 1985
Access to Medical Reports Act 1988
Road Traffic Act 1988
Children Act 1989
Computer Misuse Act 1990
Human Fertilisation and Embryology Act 1990
Disability Discrimination Act 1995
Data Protection Act 1998
Human Rights Act 1998
Public Interest Disclosure Act 1998
Health Act 1999
Anti-Terrorism, Crime and Security Act 2001
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Mental Capacity Act 2005
NHS Act 2006
NHS Redress Act 2006
Safeguarding Vulnerable Groups Act 2006
Mental Health Act 2007
Equity Act 2010
Care Act 2014
Carers Rights Act 2014
Social Action, Responsibility and Heroism Act 2015

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Table of cases

Blyth v Birmingham Waterworks Co. [1856] 11EXCH 781
Bolam v Friern Barnet HMC [1957] 2 All ER 118
Chatterton v Gerson [1981] 1 All ER 257
Donoghue v Stevenson [1932] AC 562
Gillick v West Norfolk and Wisbech AHA [1986] AC 112 (HL)
Janaway v Salford HA [1988] 3 WLR 1350 (HL)
Kay v Ayrshire and Arran Health Board [1987] 2 All ER 417
McLoughlin v O'Brien [1982] All ER 298
Maynard v West Midlands Regional Health Authority [1984] 1 WLR 634
R v Bournemouth Community & Mental Health NHS Trust ex pL [1998] 3
Smith v Leech Brain & Co Ltd [1961] 3 All ER 1159 QBD
Tarasoff v Regents of University of California 17 Cal 3d 425 (1976) (USA)
W v Edgell [1990] 1 All ER 855 CA
Whitehouse v Jordan [1981] 1 All ER 267
Wilsher v Essex Health Authority [1986] 3 All ER 801
Wilsher v Essex AHA [1988] QB 730 CA






Introduction

This book is aimed at those who are new to the fundamental concepts of legal, ethical and professional issues in nursing and who may want help in understanding them. This may be student nurses, when they come across these themes in their pre-registration nursing programme, or qualified nurses who are supervising such students in clinical practice. Hopefully, this book will provide a foundation.

It will look at the three issues – legal, ethical and professional– as separate entities. This is to help the reader understand the concepts in a better way. Although these topics will be looked at separately, in clinical nursing practice they are nearly always combined together. One way of imagining this is to consider a plait of hair. Each of the three strands is separate, but when plaited they are one.

When this occurs in the book, you will see this  symbol:

For the purposes of this text, the term ‘patient’ will refer to service users as well as patients. The term ‘nurse’ relates to all fields of nursing and specialist community public health nurses.

Law and ethics are the frameworks within which professional issues are discussed and measured. This does not mean that the law has no morals or there is no law in professional aspects of nursing. They are intertwined.

The Health Service Circular 219.99 (Department of Health, 1999) introduced the requirements for a revised nursing education programme. Under the Nursing and Midwifery Order 2001, the Nursing and Midwifery Council (NMC) is required to establish standards and minimum requirements for pre-registration nursing education. This book will help students to achieve the following NMC (2010) generic competencies for entry to the register.

Competencies for entry to the NMC register

Domain 1: Professional values

All nurses must act first and foremost to care for and safeguard the public. They must practice autonomously and be responsible and accountable for safe, compassionate, person-centred, evidence-based nursing that respects and





maintains dignity and human rights. They must show professionalism and integrity and work within recognised professional, ethical and legal frameworks. They must work in partnership with other health and social care professionals and agencies, service users, their carers and families, in all settings, including the community, ensuring that decisions about care are shared (Nursing and Midwifery Council, 2010: 13).

Domain 2: Communication and interpersonal skills

All nurses must use excellent communication and interpersonal skills. Their communications must always be safe, effective, compassionate and respectful. They must communicate effectively using a wide range of strategies and interventions including the effective use of communication technologies. Where people have a disability, nurses must be able to work with service users and others to obtain the information needed to make reasonable adjustments that promote optimum health and enable equal access to services (Nursing and Midwifery Council, 2010: 15).

Domain 3: Nursing practice and decision-making

All nurses must practice autonomously, compassionately, skillfully and safely, and must maintain dignity and promote health and wellbeing. They must assess and meet the full range of essential physical and mental health needs of people of all ages who come into their care. Where necessary they must be able to provide safe and effective immediate care to all people before accessing or referring to specialist services, irrespective of their field of practice. All nurses must also meet more complex and coexisting needs for people in their own nursing field of practice, in any setting, including hospital, community and at home. All practice should be informed by the best available evidence and comply with local and national guidelines. Decision making must be shared with service users, carers and families and informed by critical analysis of a full range of possible interventions, including the use of up-to-date technology. All nurses must also understand how behaviour, culture, socioeconomic and other factors, in the care environment and its location, can affect health, illness, health outcomes and public health priorities, and take this into account in planning and delivering care (Nursing and Midwifery Council, 2010: 17).






Domain 4: Leadership, management and team working

All nurses must be professionally accountable and use clinical governance processes to maintain and improve nursing practice and standards of health care. They must be able to respond autonomously and confidently to planned and uncertain situations, managing themselves and others effectively. They must create and maximise opportunities to improve services. They must also demonstrate the potential to develop further management and leadership skills during their period of preceptorship and beyond (Nursing and Midwifery Council, 2010: 20).

The reader will be invited to cross reference the subjects in this book with all the learning outcomes of the Nursing and Midwifery Council Order (2010) and also The Code (Nursing and Midwifery Council, 2015).

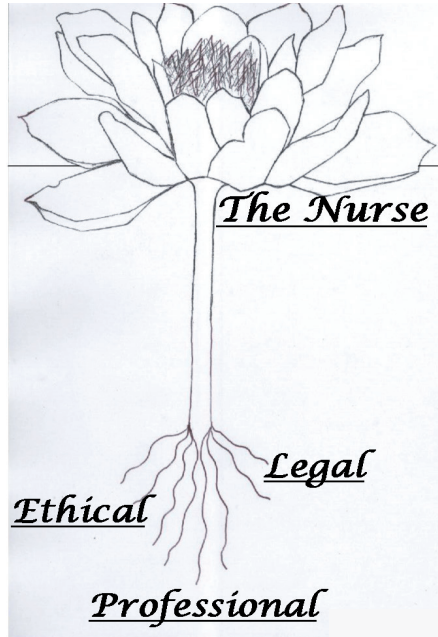
To get the most out of this book we suggest that you have a dedicated notebook/file and, if possible, access to a computer which you will use to undertake the recommended web-based activities to enhance your learning and reflection. These activities are marked with this symbol: 

This work can then be incorporated into your personal professional profile, which will help you to keep your knowledge and skills up to date throughout your nursing/midwifery career (Nursing and Midwifery Council, 2015).

References

- Department of Health (1999) *Health Service Circular HSC 1999/219 Making a Difference: Strengthening the nursing, midwifery and health visiting contribution to health and health care*. Department of Health, London
- Nursing and Midwifery Council (2010) *Standards for pre-registration nursing education*. Nursing and Midwifery Council, London
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- Nursing and Midwifery Order 2001, SI 2002 No. 253





K.A. Ramsden

The public sees the nurse in full bloom, yet nurses have their clinical practice firmly rooted to the legal, ethical and professional foundations of their education and training (SC)



