

**Fundamental aspects of legal,
ethical and professional issues
in nursing**

2nd Edition

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Note

Healthcare 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.

Fundamental aspects of legal, ethical and professional issues in nursing

2nd Edition

by

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

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Foreword to the 1st Edition

We are going through a time of considerable change in the health service in this country, and there is an urgent need for all nurses to understand the professional implications of this. Some of the key issues emerging are of course closely linked to the National Health Service Plan, and the proposals for the future regulation of the healthcare professions.

The United Kingdom Central Council for Nursing, Midwifery and Health Visiting (UKCC), and the National Nursing Boards have disappeared and in their place is a new organisation with a new purpose and new ideas. Greater public involvement is starting to put the health professions under more scrutiny and pressure for improved quality in areas such as ethical and professional decision making and participation in services.

The Nursing and Midwifery Council (NMC) has taken over the future of regulation of nurses and midwives and is now the new body which is determined to reaffirm established standards and guidelines and to develop new ones.

Every nurse should not only be able to demonstrate that they have an awareness of the legislation and policy which is providing the future framework within which health care is delivered, but also that they should have a good grasp of the fundamental legal, ethical and professional aspects which are involved.

In order to accomplish this in the limited time often available for studying and keeping up-to-date, there is a need for both relevant and pertinent information to be easily available and accessible for nurses, as well as being presented clearly, concisely and precisely.

This excellent little book by Maggie Reeves and Jacquie Orford, sets out to accomplish an ideal introduction to the subject, and after reading through it, I am sure that you will be as convinced as I am that it achieves its aims.

Students on pre-registration nursing programmes will find this an essential book to guide them in their understanding of such issues as accountability, liability, truthfulness, truth-telling, choice, consent, autonomy, and advocacy.

Professor George Castledine

Foreword to the 2nd Edition

The publication of the 2nd edition this book has been timed to coincide with significant change in nursing and the wider healthcare context. The move towards an all graduate profession, and publication in 2010 of the new Nursing and Midwifery Council standards for pre-registration nursing, demonstrate a commitment to prepare nurses to provide care confidently in transformed health services and to meet changing patterns of healthcare need.

The population is undeniably living longer; healthcare must be able to provide for those who are critically ill, and for those who are increasingly old and living with long-term conditions who wish to be partners in their care and have their individual needs addressed in different ways. Graduate nurses are expected to demonstrate advanced knowledge and skills and to apply these competently to the planning and delivery of high quality care that is appropriate for the individual needs of each patient. However, it is not sufficient just to know ‘how’ to do something competently, the nurse must also know why. Nurses must be prepared to explain to others why they have taken a particular course of action. Most nursing activities are complex and involve making a number of judgements. In order to be able to make good decisions that will meet legal requirements, professional standards, and public expectations, the nurse must have a good understanding of the legal, ethical and professional context within which they work. The chapters of this book are designed to reflect the Nursing and Midwifery Council’s four key competency domains of nursing: professional values; communication and interpersonal skills; nursing practice and decision-making; and leadership, management and team working.

This book provides readers with an introduction to the underpinning knowledge and values necessary to be a ‘good’ nurse. It provides an up-to-date legal framework for care and provides practical activities through which readers can explore professional issues and values and their application to practice. I believe this book will be useful both for those setting out on the pathway to be a nurse and for those who are more experienced who want to reflect on their care.

Jan Quallington
Associate Head Institute of Health and Society
University of Worcester

Acknowledgements

We would like to acknowledge the help of the many people who have assisted in the writing of this book.

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 Jan Quallington for writing the Foreword to this edition, and all the other authors acknowledged through the text.

Our thanks go to Mike Reeves and Steve, Christopher and Victoria Orford for ‘putting up with’ our book writing, and the inconvenience this often causes.

Special acknowledgement goes to Barbara Carvalho, who celebrated 50 years as a nurse in September 2010; thank you, Mum, for your inspirational professional guidance and support.

We would like to dedicate this book to students past and present and hope that the *Fundamental Aspects of Legal, Ethical and Professional Issues in Nursing* (2nd Edition) will be a helpful tool for study and in nursing practice.

Sally Carvalho, Maggie Reeves and Jacquie Orford

Chronological table of statutes

Offences Against the Person Act 1861
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
Health and Social Care Act 2001
Sexual Offences Act 2003
Children Act 2004
Mental Capacity Act 2005
NHS Act 2006
NHS Redress Act 2006
Safeguarding Vulnerable Groups Act 2006
Mental Health Act 2007
Equity Act 2010


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
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
Maynard v West Midlands Regional Health Authority [1984] 1 WLR 634
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, professional and ethical – 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’s (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

Introduction

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, skilfully and safely, and must maintain dignity and promote health and well-being. 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 prior to 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 healthcare. 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).

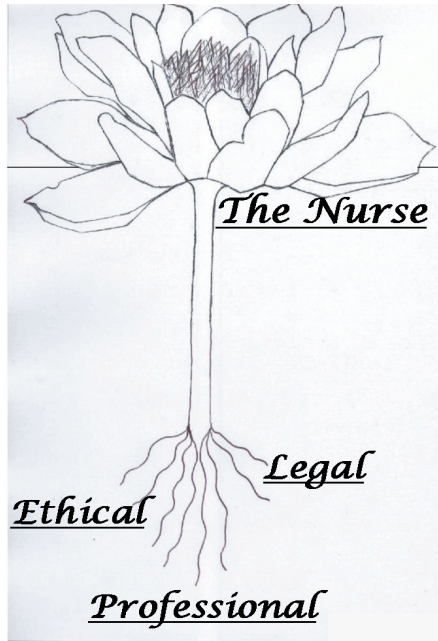
The reader will be invited to cross reference the subjects in this book with all the learning outcomes of the Nursing and Midwifery Council Order (2010) and also The Code (Nursing and Midwifery Council 2008).

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 2008).

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 (2008) *The Code: Standards of conduct, performance and ethics for nurses and midwives*. Nursing and Midwifery Council, London
- Nursing and Midwifery Council (2010) Standards for pre-registration nursing education. Nursing and Midwifery Council, London
- 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)