COURSE GUIDE

NSC 310
NURSING ETHICS AND JURISPRUDENCE

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INTRODUCTION

Nursing practice has attained an enviable status such that ethics and jurisprudence govern it. The nursing code of ethics is a formal statement of the ideals and values of nursing and ethical principles that serve as standards for nurses' actions. Jurisprudence is the scientific study of law; law is defined as those set of rules made by humans, which regulate social conduct in formally prescribed and legally binding manner.

Ethics of nursing and law are necessary in nursing because nursing is concerned with providing services that impact on human life and health and some of the situations the nurse encounters in practice pose a dilemma that if not well handled will impact negatively on the client and all that are concerned. Standards must therefore, be set to guide the nurse to conduct himself/herself properly, make adequate decisions and carry out actions that are appropriate and safe for the patient/client and thus protect herself/himself from litigations.

Medical law is permeated with philosophical and ethical questions that arguably present more dilemmas than in any other area of the law, since the no two human beings are entirely the same in genetic constitutions and reactions to the modulations of the environment which can influence management decisions and modify response to treatment. it is therefore imperative to consider the ethics that inform management choices and keep abreast of issues that may predispose to litigations. Professional ethics may sometimes be in conflict with the requirements of law. When this happens, the law is superior. This Nursing Ethics and Jurisprudence will clarify the grey areas.

THE COURSE

NSC 310: Nursing Ethics and Jurisprudence: Medical Ethics (2 – 1 – 0) 3 UNITS

A study of ethical dimensions of medical and allied practice: The course focuses on the contribution of ethical theories to the understanding and, ultimately, the resolution of ethical problems in medicine. Some of the issues covered by the course include the following: the nature of moral problem, theories of ethics, ethics of doctor/nurse and patient relationship, truth telling, white lie, euthanasia, whether or not health care delivery is a right, abortion, organ transplantation, foetal experimentation, death and dying, values in health and illness, indigenous and non-indigenous modes of healing, the nature of illness, life and death distinction, the right to live, the right to commit suicide.
This course is designed to provide the students with an understanding of moral issues, which form the basis for professional ethics in nursing and

medical practice. It introduces the students to the statutory and common laws as they affect nursing and the legal implications of contractual responsibilities in nursing practice.

The course is presented in six modules as follows:
Module 1 deals with Ethical Concepts and Regulations that Govern Nursing Practice. This module consists of four units which discuss Value Clarification, Morality, Ethics of Nursing and Regulation of Nursing Practice. The Module 2 Legal Concepts Relevant to Nursing and Nurses' Roles, consists of four units which discuss Basic Legal Concepts, Rights and Responsibilities in Client Care, The Legal Roles of the Nurse, Obtaining Informed Consent. MODULE 3: Citizens' Right to Health and Ethics and Morality applied to Nursing Practice, have four units which discuss Health as a citizens/patient's inalienable rights (whether health care delivery is a right?) , The nature of moral problem, Theories of ethics and the ethics of doctor/nurse and patient relationship and Truth telling and white lie. MODULE 4: Legal Liability and Legal Protection in Nursing Practice have three units. It discusses the basic nursing errors that result in negligence, legal doctrines related to negligence and defenses in negligence actions offenses as trespass to person, invasion of privacy, defamation, and intentional harm to property and Legal Protections in Nursing Practice.
MODULE 5: Abortion, Euthanasia and End of Life Issues discuss Abortion and Foetal experimentation, Euthanasia, , Death and dying, values in health and illness, indigenous and non-indigenous modes of healing, the nature of illness, life and death distinction, the right to live, the right to commit suicide. Module 6 Ethical Dilemma and Decision Making in Nursing consist of Ethical Problems in Nursing, Ethical Decision Making in Nursing, Application of Chally and Loriz Decision Making Model in Resolving Ethical Dilemma and application of Cassells and Redman 1989 Model in Resolving Ethical Dilemma.

COURSE AIM

The course is designed to provide you with an understanding of moral issues which form the basis of professional ethics in nursing and the legal implications of contractual responsibilities of nursing practice so that they can apply them in all nursing situations in which they are required. It also discusses the basis for litigations in nursing and medical practice.

COURSE OBJECTIVES

Following from the aim of the course, the course is based on the under listed objectives. After going through this course you should be able to:

- explain the essentials in moral development and value clarification.
- discuss the relevant issues in nursing code of ethics and the regulation of nursing practice.
- state the rights and responsibilities in client care and the legal roles of nurses.
- discuss areas of legal liabilities in nursing and the legal protection for the nurse.
- examine ethical problems and the different models for ethical decision making in nursing.
- apply the models for ethical decision making in the resolution of ethical dilemmas.

WORKING THROUGH THE COURSE

You are required to spend a lot of time reading in this course. The content of the course covers a wide area of ethical and legal issues that you need to know to function effectively and thereby protect yourself and the client. It is therefore important that you spend quality time to study and understand the course. It is also important that you avail yourself of the opportunity of tutorial sessions where you can seek further clarifications and also compare and exchange knowledge and experience with your peers.

THE COURSE MATERIALS

You will be provided the following materials:

- A Course Guide
- The relevant study units
- A list of recommended textbooks, which, though not compulsory for you to acquire and read, are necessary as supplements to the course material.

STUDY UNITS

The course comprises of the following course units distributed in the six modules that make up the course.

Module 1 Ethical Concepts and Regulations that Govern Nursing Practice

Unit 1 Value Clarification. In this unit, you will learn the meaning of value, types of value how values are developed, essential values in nursing and the process of clarifying nurses‟ and clients‟ values.

Unit 2 Morality. In this unit, you will learn what morality is, moral development theory and process, moral frameworks and principles.

Unit 3 Ethics of Nursing. In this unit, you will learn what ethics is, difference between ethics and law, types of ethics, purposes of professional ethics, the nursing code of ethics and its application.

Unit 4 Regulation of Nursing Practice. In this unit you will learn about issues in credentialing, standards of practice and the role of the Nursing and Midwifery Council of Nigeria in regulating nursing practice in Nigeria.

Module 2 Legal Concepts Relevant to Nursing and Nurses' Roles

Unit 1 Basic Legal Concepts. In this unit, you will learn the meaning of law and functions of law in nursing, sources of law, principles of law and the civil judicial process.

Unit 2 Rights and Responsibilities in Client Care. In this unit, you will learn about the rights of clients in health care, nurses‟ responsibilities in health care and how you can apply the clients bill of rights in nursing care.

Unit 3 The Legal Roles of the Nurse. In this unit, you will learn what your rights and responsibilities are in your role as a citizen, employee or contractor for service, and provider of service. You will also learn about your role in selected facets of nursing practice and the legal responsibilities of students.

Unit 4 Obtaining Informed Consent. In this unit, you will learn the meaning of informed consent, exceptions in obtaining consent, nurses‟ responsibility in obtaining consent, stages of on-going consent to care, problems in obtaining consent and strategies you can adopt to overcome problems in obtaining consent.

Module 3 Citizens' Right to Health and Ethics and Morality applied to Nursing Practice

Unit 1 Health as a citizens/patient's inalienable rights (whether health care delivery is a right?)

Unit 2 Morality helps us to clearly defined standards of adjudging certain behaviours, actions, and attitudes as good or wrong with clearly set guidelines for consequences. This unit will discuss different types of morality, how molarity is developed.

Unit 3 The application of legal principles in routine nursing practice is quite more complex than it appears to be.

Practice issues will often result in conflicts between morality and ethics and practitioners will frequently face dilemmas on the "right thing to do" under the prevailing circumstances with regards to all pertains to the patient. This unit discuss the ethical theories and principles applied to the practice of nursing and the principles approach to ethics.

Unit4 Keeping the patients well and fully informed with serial updates about diagnosis, management trends, complications and prognosis is one of the patient's rights in any healthcare system

Module 4 Legal Liability and Legal Protection in Nursing Practice

Unit 1 Tort of Negligence and Malpractice. In this unit you will learn about the basic nursing errors that result in negligence, legal doctrines related to negligence and defenses in negligence actions.

Unit 2 Intentional Torts that are relevant to Nursing Practice. In this unit you will learn about such offenses as trespass to person, invasion of privacy, defamation, and intentional harm to property. You will also learn about the defence in such actions.

Unit 3 Legal Protections in Nursing Practice. In this unit you will learn about laws designed to protect health care providers and the actions nurses can take to protect themselves against liability

Module 5 Abortion, Euthanasia and End of Life Issues

Unit 1 This unit discuss abortion and Foetal experimentation.

Unit 2 This unit discuss euthanasia or mercy killing which has different means of consideration by which health care practitioners (HCPs) justify their actions in cases that warrant such an action.

Unit 3 This unit discuss death and dying, values in health and illness, indigenous and non-indigenous modes of healing, the nature of illness, life and death distinction, the right to live, the right to commit suicide.

Module 6 Ethical Dilemma and Decision Making in Nursing

Unit 1 Ethical Problems in Nursing. In this unit, you will learn about the meaning of ethical dilemma, the sources, and categories of ethical problems.

Unit 2 Ethical Decision making in Nursing. In this unit, you will learn about different models for making ethical decision

and the strategies to enhance ethical decisions and practice.

Unit 3 Application of Chally and Loriz Decision-Making Model in Resolving Ethical Dilemma. This unit illustrates how Chally and Loriz model can be used to resolve an ethical dilemma.

Unit 4 Application of Cassells and Redman 1989 Model in Resolving Ethical Dilemma. The unit illustrates how Cassells and Redman 1989 decision making model can be used to resolve an ethical dilemma.

TEXTBOOKS AND FURTHER READING

The following books are recommended for further reading:

Anarado, A. N. (2002). Ethics and Law in Nursing Practice. Enugu: Snaap Press. Basavanthappa, B. T. (2008). Fundamentals of Nursing. New Delhi: Jaypee Brothers Medical Publishers (P) Ltd.

Berman, A., Snyder, S. J., Kozier, B., Erb, G. L., Levett-Jones, T., Dwyer, T., Hales, M., Harvey, N., Moxham, L., & Park, T. (2014). *Kozier & Erb's fundamentals of Nursing Australian edition* (Vol. 3). Pearson Higher Education AU.

Fry S.T, Veatch R.M, & taylor C (2011). Case Studies in Nursing Ethics. Jones & Bartlett Learning, LLC, United States of America

Ndatsu, P. N. (1999). Practicing Nursing and Midwifery in Nigeria: Ordinances and Laws 1980 – 1992. Lagos: Yembas Ventures Ltd.

Staunton P. & Chiarella M. (2013). Law for Nurses and Midwives. 7th Edition. Churchill Livingstone, Elsevier Australia

Tingle J & Cribb A (2014). Nursing Law and Ethics. 4th Edition Jones & Bartlett Learning, LLC, USA.

Yakubu, J. A. (2002). Medical Law in Nigeria. Ibadan: Demyax Press LtdM

HOW TO GET THE MOST OUT OF THE COURSE

In distance learning, the study units replace the university lecture. This is one of the greatest advantages of distance learning. You can read and work through specially designed study materials at your own pace and at time and place that suit you best. Think of it as reading the lecture notes instead of listening to a lecturer. In the same way that a lecturer might

set you some reading task, the study units tell you when to read your other material. Just as a lecturer might give you an in-class exercise, your study units provide exercise for you to do at appropriate points.

The following are practical strategies for working through the course:

- Read the course guide thoroughly.
- Organise a study schedule.
- Stick to your own created study schedule.
- Read the introduction and objectives very well.
- Assemble your study materials.
- Work through the unit.
- Keep in mind that you will learn a lot by doing all your assignment carefully.
- Review the stated objectives.
- Don't proceed to the next unit until you are sure you have understood the previous unit.
- Keep to your schedules of studying and assignments.
- Review the course and prepare yourself for the final examination.

FACILITATORS/TUTORS AND TUTORIALS

There are 8 hours of effective tutorial provided in support of this course. Details will be communicated to you together with the names and phone numbers of your tutors through the study centre.

Your tutor will mark and comment on your assignments, keep a close watch on your progress and any difficulties you might encounter and also provide assistance to you during the course. You must ensure that you submit your assignment as and at when due. You will get a feedback from your tutors as soon as possible to the assignments.

Please, do not hesitate to contact your tutors or study centre on phone or email in case of any of the following circumstances:

When you do not understand any part of the study units or the assigned reading.

- When you have difficulty with the self-test or exercises.
- When you have questions or problems with an assignment, tutors comments or grading of an assignment.

You are encouraged to attend the tutorials to allow for face-to-face contact with your tutor and ask questions to which you need answers immediately. It is also an opportunity to discuss any grey area with your tutor. You can equally prepare questions to the tutorial class for

meaningful interactions. You are sure to gain a lot from actively participating in the discussion.

ASSESSMENT

There are two components of assessment for this course. The Tutor-Marked Assignment (TMA) and the end of course examination.

TUTOR-MARKED ASSIGNMENT (TMA)

The TMA is the continuous assessment component of the course. It accounts for 30% of the total score. You will be given four TMAs to answer. Three of these must be answered before you are allowed to sit for the end of course examination.

FINAL EXAMINATION AND GRADING

The end of course examination concludes the assessment for the course. It constitutes 70% of the assessment score.

SUMMARY

The course is designed to provide you information that will increase your understanding of moral issues, which form the basis for professional ethics in nursing, and the legal implications of contractual responsibilities of nursing practice. By the time you complete the study of this course you will be able to answer such questions as:

- How will you clarify your value and help the client to clarify his/her own values?
- What are the moral principles that are relevant in nursing?
- As a nursing practitioner, you will understand the concept of litigations in nursing.

It is our earnest desire that you understand and apply the information in the course to your practice, that way, you can be sure that your actions will be safe and thus protect the client and yourself. We wish you excellent success as you navigate this course.

MAIN COURSE

CONTENTS

MODULE 1 ETHICAL CONCEPTS AND REGULATIONS THAT GOVERN NURSING PRACTICE

UNIT 1 VALUE CLARIFICATION

Unit Structure

1.1 Introduction

In providing nursing care, nurses find themselves in situations where sensitive decisions are made about the best way to treat illness and solve health care problems. Values influence decisions and actions and value clarification promotes quality decisions by fostering awareness, empathy and insight. Value clarification is therefore an important step for nurses in dealing with ethical problems. This unit examines the definition of value, types of value, how values are developed, essential nursing values and how to clarify nurses and clients values.

1.2 Learning Outcomes

By the end of this unit you will be able to:

- define value
- distinguish between the types of value
- describe how values are developed
- explain the essential nursing values
- explain how nurses can clarify their values and help clients to clarify their own values.

1.3 Definition of Value

Value is a freely chosen, enduring belief or attitude about the worth of person, object, idea or action. It is a belief about worth that acts as standard to guide one's behaviour. The worth or value you ascribe to a person or object will determine how you behave towards the person or how you handle the object. Values are often taken for granted. In the same way that you are not aware of your breathing, you usually do not think about your values. You simply accept them and act on them.

A value set is a small group of values held by an individual. People organise their sets of values internally along a continuum from most important to least important, forming a value system. Value systems are basic to a way of life, giving direction to life, and form the basis of behaviour especially behaviour that is based on decisions and choices. For example, a jewellery you place a lot of value on is placed under lock and key, while the one you have put little value on is left on the table. The same will apply in your behaviour towards human beings.

Although values consist of freely chosen and enduring beliefs and attitudes, beliefs and attitudes are related but not identical to values.

Belief (opinion) is an interpretation or conclusion that you accept to be true. It is based more on faith than fact and may or may not be true. Beliefs do not necessarily involve value. For example, the statement, "I believe that if I work hard, I will pass this examination." expresses a belief that does not involve a value. By contrast, the following statement, "It is important to me that I pass this examination, I believe I must study hard to pass the examination involves both a value and a belief.

Attitudes are mental positions of feelings toward a person, object or idea; for example, acceptance of a person, compassion for a person or openness. Typically an attitude continues over time, whereas a belief may last only briefly. Attitudes are often judged as bad or good, positive or negative, whereas beliefs are judged as correct or incorrect.

Attitudes have thinking and behavioural aspects, but feelings are essentially important component because they vary greatly among individuals. For example, some clients may feel strongly about their need for privacy whereas others may dismiss it as unimportant.

1.3.1 Types of Values

There are six basic types of values underlying a person's interests and motives. They are presented in table 1:

Table 1: Types of Value and their Related Characteristics

TYPES OF VALUE	*RELATED CHARACTERISTICS*
Theoretical	The theoretical person values truth and tends to be empirical, critical and rational. He keeps records and works with the facts on ground.
Economic	The economic person is interested in what is practical and useful. He is not interested in irrelevance and does not believe in wasting resources.
Aesthetic	The aesthetic person values beauty, form and harmony. He does not like untidiness around him. He believes that things should be done in an orderly manner.
Social	The social person values human beings in terms of love and is kind, sympathetic and unselfish. He enjoys teamwork.
Political	The political person values power. He is interested in leading and directing. He desires recognition.
Religious	The religious person values unity.

Although each person's value orientation is a unique blend of these six types of values, one of the types usually predominates. Identifying your own orientation as well as that of others will help you understand how

people perceive situations differently and choose different courses of action and make you better and able to handle situations that confront you in the course of your work.

SELF-ASSESSMENT EXERCISE 1

i. Define value.
ii. Differentiate between belief and attitude.

1.3.2 Development of Values

An individual is not born with values. Rather values are formed over a lifetime through information from the environment, family, and society. As a child observes actions, he quickly learns what has high and low value for family members. For example, if a parent consistently demonstrates honesty in dealing with others, the child will probably begin to value honesty.

Although people derive values from society and the subgroups of society, they internalise some or all of these values and perceive them as personal values. People need to inculcate societal values to feel accepted, and they need personal values to have a sense of individuality.

Nurses' professional values are acquired during socialization into nursing. It is within the nursing, educational programme that the nurse develops, clarifies and internalises professional values.

Essential Nursing Values

Specific professional nursing values are stated in nursing code of ethics, in standards of nursing practice and in the legal system itself. Watson, (1981), outlined four important values of nursing as follows.

- strong commitment to service
- belief in the dignity and worth of each person
- commitment to education professional autonomy.

In comparison, in 1986, the American Association of college of nursing undertook a project that included the identification of values essential to the practice of professional nursing. The group identified seven values and related attitudes and personal qualities and professional behaviour. These are presented in table 2:

Table 2: Essential Nursing Values and Behaviours

ESSENTIAL VALUES	ATTITUDES AND PERSONAL QUALITIES	PROFESSIONAL BEHAVIOUR
Altruism - concern for the welfare of others	Caring, commitment, compassion, generosity, perseverance	Gives full attention to the client when giving care. Assists other personnel in providing care when they are unable to do so. Expresses concern about social trends and issues that have implication for health care.
Equality Having the same rights, privileges or status	Acceptance, assertiveness, fairness, self-esteem, tolerance	Provides nursing care based on the individual's needs irrespective of personal characteristics Interacts with other providers in a non-discriminatory manner. Expresses ideas about the improvement of access to nursing and health care.
Aesthetics- Qualities of objects, events and persons that provide satisfaction	Appreciation, creati imagination, sensitivi	Adapts the environment so that it is pleasing to the client. Creates a pleasant work environment for self and others. Presents self in a manner that permits a positive image of nursing.
Freedom - Capacity to exercise choice	Confidence, hope, independence, openness, selfdirection, selfdiscipline.	Honours individual's right to refuse treatment. Supports the rights of other providers to suggest alternatives to the plan of care. Encourages open discussion of controversial issues in the profession.
Human dignityInherent worth and uniqueness of an individual	Consideration, empathy, humanness, kindness, respectfulness, trusts.	Safeguards individual's right to privacy, addresses individuals, as they prefer to be addressed. Maintains confidentiality of clients and staff. Treats others with respect regardless of their background.
Justice. Upholding moral and legal principles	Accountability, authenticity, honesty, inquisitiveness, rationality, reflectiveness.	Documents nursing care accurately and honestly. Obtains sufficient data to make sound judgements before reporting infractions of organisational policies. Participates in professional efforts to protect the public from misinformation about nursing.

Source: Kozier *et al.* (2000)

Self-Assessment Exercise 2

i. List the six types of value.
ii. Outline the characteristics that are related to each of the types.
iii. Outline why this knowledge is important to you.

1.4 Value Clarification

Value clarification is a process by which people identify, examine, and develop their own individual values. A principle of value clarification is that no one set of value is right for everyone. When people identify their values, they can retain or change them and this act on the basis of freely chosen, rather than unconscious values. Value clarification promotes personal growth by fostering awareness, empathy, and insight. Raths, Harmin and Simon developed one widely used theory of value clarification in 1966. The process has seven steps centered on three main activities; choosing (cognitive) prizing (affective), and acting (behavioural).

Choosing - beliefs are chosen

- freely without outside pressure
- from among alternatives
- after careful consideration (reflection) of the consequence of each alternative.

Prizing - chosen beliefs are prized

- with pride and happiness

Acting - chosen beliefs are

- Affirmed to others
- Incorporated into one's behaviour
- Repeated consistently in one's life

1.4.1 Clarifying the Nurse's Values

Nurses and nursing students need to examine the value they hold about life, health, illness and death. One strategy for gaining awareness of personal values is to consider one's attitude about specific issues such as abortion or euthanasia, asking "can I accept this? Can I live with this?"

"What will I do? What should I do in this situation?"

In an effort to encourage health care professional to respect and accept the individuality of clients, some educators have advised that professionals be "value neutral" and non-judgmental in their professional role. The nurse has a commitment to clients whether or not the nurse and clients hold the same value.

The nurse does not assume that her personal values are right and should not judge the clients values as right or wrong depending on their congruence with the nurse's personal value system. This type of thinking enables a nurse to care for a client with different values. For examples, a nurse who strongly believes that any pre-marital or extramarital sex is wrong may offer competent and compassionate nursing care to a young prostitute with active sexually transmitted illness. On the other hand, if the same client, following education, indicates that she is unconcerned about whom she might infect in future sexual encounters, the nurse is in no way bound to be non-judgmental about this response. In this case, it would not be morally permissible for the nurse to view this behaviour with indifference. Because not all values are equal, nurses may have a moral obligation to respond to a client's value that may cause harm to the client and others.

1.4.2 Clarification of Clients' Values

In order to plan effective care, nurses need to identify clients' values as they influence and relate to a particular health problem. For example, a client with failing eyesight will probably place a high value on the ability to see. This will inform the type of care the nurse will plan for the client. When clients hold unclear or conflicting values that are detrimental to their health, the nurse should use value clarification as an intervention. Examples of behaviours they may indicate the need for value clarification includes:

- Client ignores a health professional's advice. For example, a client with heart disease ignores advice to exercise regularly.
- Client exhibits inconsistent communication or behaviour – for example, a pregnant woman says she wants a healthy baby but continues to drink alcohol and smoke tobacco.
- Client has a history of numerous admissions to health agency for the same problem – for example, a middle-age obese woman repeatedly seeks help for back pain but does not lose weight.
- Client is confused and uncertain about which course of action to take – for example, a woman wants to obtain a job to meet financial obligations but also wants to stay at home to care for an ailing husband.

In such situations the nurse should help the client clarifying his value. The following process may be adopted:

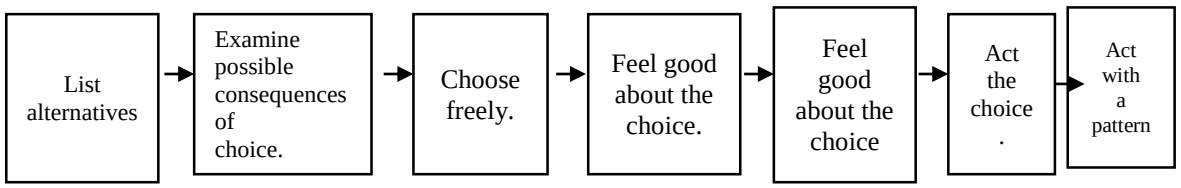

Fig. 1: Task in Helping Client Clarify his Values

In listing alternatives, make sure that the client is aware of all alternative actions. Ask, “Are you considering other courses of action?” “Tell me about them.”

In examining possible consequence of choice, make sure that the client has thought about possible results of each action. Ask, “What do you think you will gain from doing that? “What benefits do you foresee from doing that?”

To determine whether the client chose freely, ask, “Did you have any say in that decision?” “Do you have a choice?”

To determine whether the client feels good about the choice, ask, “How do you feel about that decision (or action)?” Because some clients may not feel satisfied with their decision, a more sensitive question may be, “some people feel good after a decision is made, others feel bad, how do you feel?”

To affirm the choice, ask, “what will you say to others e.g. family, friends etc. about this?”
To determine whether the client is prepared to act on the decision, ask, “Will it be difficult to tell your friend about this?”

To determine whether the client consistently behaves in a certain way, ask. “How many times have you done that before?” or “Would you act that way again?”

When implementing these steps to clarify value, you should assist the client to think each question through, but you should not impose your personal values. You may offer an opinion only when the client asks for it and you should do so with great care.

1.5 Summary

In this unit, we have learnt that:

- Value is a belief about worth that act as standard to guide our behaviour.
- There are six types of value, which blend to make up a person's value orientation, but that one of the types usually predominates to give individual differences.
- Values are formed over a lifetime through information and observations from the environment, family and society.
- Essential nursing values include affirmation, altruism, aesthetics, freedom, human dignity, justice and truth.
- Value clarification is a process that involves seven steps.

1.6 Reference/Further Reading/Web Resources

Anarado, A. N. (2002). Ethics and Law in Nursing Practice. Enugu: Snaap Press. Basavanthappa, B. T. (2008). Fundamentals of Nursing. New Delhi: Jaypee Brothers Medical Publishers (P) Ltd.

Berman, A., Snyder, S. J., Kozier, B., Erb, G. L., Levett-Jones, T., Dwyer, T., Hales, M., Harvey, N., Moxham, L., & Park, T. (2014). *Kozier & Erb's fundamentals of Nursing Australian edition* (Vol. 3). Pearson Higher Education AU. Fry S.T, Veatch R.M, & taylor C (2011). Case Studies in Nursing Ethics. Jones & Bartlett Learning, LLC, United States of America

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Tingle J & Cribb A (2014). Nursing Law and Ethics. 4th Edition Jones & Bartlett Learning, LLC, USA.

Yakubu, J. A. (2002). Medical Law in Nigeria. Ibadan: Demyax Press LtdM

UNIT 2 MORALITY

Unit Structure

2.1 Introduction

Nurses are confronted by disturbing client care situations that require them to make ethical decisions. To be effective in making these decisions, they need to think reason and make right choices. They can do this by using moral theories and principles. Moral theories and principles help nurses to develop explanations for their decisions and actions and in discussing problem situations with others. This unit examines the concept of morality, the processes of moral development, different moral frameworks and the philosophical concepts in moral principles.

2.2 Objectives

By the end of this unit, you should be able to:

- explain the concept of morality
- describe the processes of moral development
- differentiate among the different moral frameworks
- explain the philosophical concepts in moral principles.

2.3 Main Content

2.3.1 Concept of Morality

Morality usually refers to private, personal standards of what is right and wrong in conduct, character and attitude. Sometimes the first clue to the moral nature of a situation is an aroused conscience or an awareness of feelings such as guilt, hope or shame. Another indicator is the tendency to respond to the situation with words such as; “ought”, “should”, “right”, “wrong”, “good”, “bad”. Moral issues are concerned with important social values and norms. Morality is not the same as law. It is important to distinguish between the two.

Law reflects the moral values of a society, and they offer guidance in determining what is moral. However, an action can be legal but not moral. For example, an order for full resuscitation of a dying client is legal, but one could question whether that act is moral. On the other hand, an action can be moral but illegal. For example, if a child at home stops breathing, it is moral but not legal to exceed the speed limit when driving the child to the hospital.

It is also necessary to distinguish the terms; morality, moral behaviour, and moral development. Morality refers to the requirements for people to live together in society. Moral behaviour is the way a person perceives these requirements and responds to them while Moral development is the pattern of change in moral behaviour with age.

2.4 Moral Development

Moral development is the process of learning to tell the difference between right and wrong, and of learning what ought and ought not to be done. It is a complex process that begins in childhood and continues throughout life.

Theories of moral development attempt to answer such questions as:

- How does a person become moral?
- What factors influence the way a person behaves in a moral situation?

Lawrence Kohlberg and Carol Gilligan postulated two commonly used moral development theories. These two theories will be discussed.

2.4.1 Lawrence Kohlberg's Theory of Moral Development

Lawrence Kohlberg‟s theory specifically addressed moral development in children and adults. It focused on the reasons why an individual makes a decision. According to Kohlberg, moral development progresses through three levels and six stages. The levels and stages are not linked to a specific developmental stage because some people progress at a higher level of moral development than others.

Levels of Kohlberg's Moral Development Process

1. Pre-moral or pre-conventional level – children are responsive to cultural values and labels of good and bad, right and wrong. However, they interpret these in terms of the physical consequence of their action that is punishment or reward.

2. Conventional level – here the individual is concerned about maintaining the expectations of the family, group or nation and sees this as right. The emphasis at this level is conformity and loyalty to one‟s own expectations as well as society‟s.

3. Post conventional, autonomous or principle level – at this level the individual makes an effort to define valid values and principles without regard to outside authority or to the expectations of others. The stages that come under these levels and the accompanying examples are presented in table 1.

Table 1: Kohlberg's Stages of Moral Development

Levels and stages	Definition	Example
Level 1 Preconventional stage 1: punishment and obedience orientation	The activity is wrong if one is punished and the activity is right if one is not punished.	The nurse follows hospital‟s policy so as not to be sacked
Stage 2: Instrumental relativist orientation	Action is taken to satisfy one‟s needs.	A child on admission agrees to take his drugs if the nurse will give him biscuits.
Level 2 Conventional Stage 3 interpersonal concordance (good boy, nice girl)	Action is taken to please another and gain approval	The nurse in-charge gives a subordinate a day off to enable her attend to personal matters.
	Right behaviour is	The nurse does not

Stage 4: law and order orientation **Level 3** Post conventional Stage 5: social contract, legalistic orientation	obeying the law and following the rules. Standard of behaviour is based on adhering to laws that protect the welfare and rights of others. Personal values and opinions are recognised and violating the rights of other is avoided.	allow a client‟s relation to visit him because hospital rules stipulated no visitors after 6.30pm. A nurse arranges for a Moslem client to have privacy for prayer each evening.
Stage 6: Universal ethical principles	Universal moral principles are internalised. Person respects other humans and believes that relationships are based on mutual trust	A nurse becomes an advocate for a hospitalized client by reporting to the nursing supervisor a conversation in which a physician threatened to withhold assistance unless client agreed to surgery.

Source: Adopted from Kozier, B *et al.* (2000)

2.4.2 Carol Gilligan's Stages of Moral Development

Carol Gilligan believes that most frameworks for research in moral development do not include the concept of caring and responsibility. She described three stages in the process of developing an „ethic of care‟. Each stage ends with a transitional period that is a time when the individual recognises a conflict or discomfort with some present behaviour and considers new approaches.

Stage 1 – Caring for oneself
In this stage the person is concerned only with caring for self. The focus of this stage is survival. The end of the stage occurs when the individual begins to view this approach as selfish. The person also begins to see a need for relationships and connections with other people.

Stage 2 – Caring for others
During this stage, the individual recognises the selfishness of earlier behaviour and begins to understand the need for caring relationship with others. Caring relationships bring with them responsibility. The individual now approaches relationships with a focus of not wanting to

hurt others. This approach causes the individual to be more responsive and submissive to others needs, excluding any thoughts of meeting his own. A transition occurs when the individual recognises that this approach can cause difficulties with relationships because of the lack of balance between caring for oneself and caring for others.

Stage 3 – Caring for self and others
During this stage a person sees the need to balance between caring for others and caring for self. The concept of responsibility now includes responsibility for self and for other people. Care remains the focus on which decision is made. However, the person recognises the interconnection between self and others and realises that if one‟s own needs are not met, others may also suffer. This is to say that if you do not take good care of yourself, you will not be healthy enough to take good care of the clients. So you owe it as a moral duty to make effort to meet your needs and be in good health.

Self-Assessment Exercise 1

i. Define morality.
ii. Distinguish the following:

a. Morality
b. Law
c. Moral behaviour
d. Moral development.

2.5 Moral Frameworks

Moral theories provide different frameworks through which nurses can view and clarify disturbing client care situations. Nurses can use moral theories in developing explanation for their ethical decisions and actions and in discussing problem situations with others. Three types of moral theories are widely used and they can be differentiated by their emphasis on either (a) Consequences, (b) Principles and duties or (c) Relationships.

Consequence – based (teleological) theories look to the consequences of an action in judging whether that action is right or wrong. Utilitarianism which is one form of consequentiality theory, views a good act as one that brings the most good and the least harm for the greater number of people. This is called the principle of utility. This approach is often used in making decisions about the funding and

delivery of health care. For example, if you are on night duty, you require the light in the ward to be on for you to carry out the care of the clients but leaving the lights on may disturb the clients sleep. Using the principle of utility, you can decide to leave the light on or put it off or use bedside lights when the need arises.

Principles – based (deontological) theories emphasize individual rights, duties and obligations. Here the morality of an action is determined, not by its consequences but by whether it is done according to an impartial, objective principle. For example, following the rule "Do not lie," a nurse might believe she should tell the truth to a dying client even though the physician has given instruction not to do so.

Relationships – based (caring) theories stress courage, generosity commitment, and the need to nurture and maintain relationship. Unlike the two preceding theories, which in general, frame problem in terms of justice (fairness) and formal reasoning, caring theories judge actions according to a perspective of caring and responsibility. Whereas principles – based theories stress individual rights, caring theories promote the common good or welfare of the group.

Caring – based ethics seems to fit well with nursing. Caring is a central force in the client-nurse relationship, and a force for protecting and enhancing client dignity. Guided by this framework, nurses use touch, and truth – telling to affirm clients as persons, not objects, and to help them make choices and find meaning in their illness experiences.

A moral framework guides moral decisions, but does not determine the outcome. This can be seen in this scenario in which a weak, elderly client insists she does not want a liver biopsy but the family and doctor insist she should have it. Three nurses have each decided that they will not help with preparations for the biopsy and that they will work through proper channels to try to prevent it. Using consequence – based reasoning, nurse A thinks, "Liver biopsy will cause her more suffering and probably more harm and the family may even feel guilty later". Using principle-based reasoning; nurse B thinks, "This violates the principle of autonomy. This woman has a right to decide what happens to her body". Using caring-based reasoning, Nurse C thinks, "My relationship to this client commits me to protecting her and meeting her needs; and I feel a lot of compassion for her. I must try to help the family to understand that she needs their support.

Self-Assessment Exercise 2

i. Define moral development.
ii. Describe Kohlberg‟s and Gilligan‟s stage of moral development.

2.6 Moral Principles

Moral principles are statements about broad, general, philosophic concepts which provide the foundation for moral rules, which are specific prescriptions for actions. For example, the rule, "people should not lie" is based on the moral principle of respect for people. Principles are useful in ethical discussions because even if people disagree about which action is right in a situation, they may be able to agree on the principles that apply. Such an agreement can serve as the basis for a solution that is acceptable to all parties. For example, most people would agree to the principle that nurses are obligated to respect their clients even if they disagree as to whether the nurse should deceive a particular client about his her prognosis. Some of the moral principles include:

Autonomy – This refers to the right to make one‟s own decisions. Nurses who follow this principle recognise that each client is unique, has the right to be what that person is and has the right to choose personal goals. People have "inward autonomy" if they have the ability to make choices; they have "outward autonomy" if their choices are not limited or imposed by others.

Honoring the principle of autonomy means that the nurse respects a client's right to make decisions even when those choices seem not to be in the client's best interest. It also means treating others with consideration. This principle can be seen in the requirement that clients provide informed consent

Non malfeasance is duty to do no harm. Although this would seem to be a simple principle to follow, in reality it is complex. Harm can mean intentional harm, risk of harm or unintentional harm. In nursing, intentional harm is never acceptable. However, the risk of harm is not always clear. A client may be at risk of harm during a nursing intervention that is intended to be helpful. For example, a client may react adversely to a medication, and care givers may or may not always agree on the degree to which a risk is normally permissible.

Beneficence means "doing good". Nurses are obligated to doing good, that is, to implement actions that benefits and their persons. However "doing good" can also pose a risk of "doing harm". For example, a nurse may put on extra clothing for a child to provide warmth but the child may sweat and wet the clothing and have the risk of pneumonia. You should be careful to avoid such incidents.

Justice is often referred to as fairness. Nurses often face situations in which a sense of justice should prevail. For example, a nurse making home visits finds one client fearful and depressed and knows she could help by staying for about one hour more to talk with the patient. However, that would take time from her next client, who is a diabetic who needs a great deal of teaching and observation. In such a situation, you will need to weigh the facts carefully in order to divide your time justly among your clients.

Fidelity means to be faithful to agreements and promises. By virtue of their standing as professional care givers, nurses have responsibility to clients, employers, government, and society, as well as to themselves.
Nurses often make promises such as "I'll be right back with your pain medication", "you will be alright", "I will find out for you". Clients take such promises seriously so you too should take them seriously and fulfil them, as you have promised.

Veracity refers to telling the truth. Although this seems straight forward, in practice choices are not always clear. Should a nurse tell the truth when it is known that the lie will relieve anxiety and fear? Lying to sick persons is rarely justified. The loss of trust in the nurse and the anxiety caused by not knowing the truth, usually outweigh any benefit derived from lying.

Confidentiality involves not divulging to others privilege information entrusted to one without good judgment. You must not divulge any information that the client gave to you in confidence except divulging the information will help solve the problem of the client. In such a case, you must obtain the permission of the client to do so after having explained to him the reason you think it is necessary to do so. If the permission is not obtained before divulging, the client may lose confidence and trust in you and that will hamper the success of the nurse-client interaction.

2.4 Summary

Since the decisions you make during your interactions with your clients can either have positive or negative effects on the clients or you, it is important that you check the morality of the decision before you make your choice.

In this unit we have learnt that:

- Morality is a private personal standard of what is right and wrong in conduct, character and attitude.
- Moral development is a process of learning to tell the difference between right and wrong and of learning "what ought" and "what ought not". The process can be seen in Kohlberg‟s and Gilligan‟s stages of moral development.
- Moral frameworks help you to view and clarify disturbing client situations and thus lead to the making of right choices. The three moral theories that are widely used are differentiated by their emphasis on (a) Consequence (b) Principle and Duty (c) Relationships.
- Moral principles are statements about broad general philosophical concepts which provide the foundation for moral rules that specify prescription for action. They include; autonomy, nonmalfeasance, beneficence, justice, fidelity, veracity and confidentiality

2.5 Reference/Further Reading/Web Resources

Kozier, B. *et al.* (2000). *Fundamentals of Nursing; Concepts, Process and Practice*, (6th ed.). New Jersey: Prentice Hall Health.

UNIT 3 ETHICS OF NURSING

Unit Structure

3.1 Introduction

Ethics have always been an integral part of nursing. Throughout nursing, you find code of ethics, statements of moral principles, treaties on maintaining high ideals, and recorded discussions of moral and ethical issues. The aim is that they guide nurses to provide quality and effective client care. It is however important to note that professions do not make ethical decisions but it is the individuals that make ethical choices. An organisation may provide the environment or atmosphere for acting ethically but it is the people of the organisation that put the ethics into practice. It is therefore necessary that nurses understand the ethics of nursing, internalise it so as to use it in all aspects of their practice. This unit examines the concept of ethics, types of ethics, purposes of professional code of ethics, and nursing codes of ethics.

3.2 Objectives

By the end of this unit, you should be able to:

- explain the concept of ethics
- distinguish between ethics and law
- differentiate between the types of ethics outline the purposes of professional code of ethics explain the nursing code of ethics.

3.3 Main Content

3.1.1 Concept of Ethics

Ethics has several meanings in common use. It is:

- A method of inquiry that helps people to understand the morality of human behaviour. You remember I said in an earlier discussion that morality refers to the requirements necessary for people to live together.
- The practices or beliefs of a certain group e.g. nursing ethics, medical ethics, etc. Remember that beliefs are interpretations or conclusions that people accept to be true.
- The science relating to moral actions and one‟s value system
- The expected standards of moral behaviour of a particular group as described in the group‟s formal code of professional ethics.

Many authors agree that ethics and morals convey the same meaning but there are some that contend that ethics refers to publicly stated and formal set of rules or values, while morals are values or principles to which one is personally committed. For the professional nurse, however, both the publicly stated and formal sets of rules and values and the personally committed principles interact to shape the nurses moral behaviour.

Ethics is not confined to nursing. It is part and parcel of everyone's life in a civil society. No individual is born with a set of ethical standards; rather they are acquired through life experiences.

3.1.2 Law and Ethics

In so far as ethics relates to rules of conduct. It is similar to law. Both are based on understanding principles of right and wrong of acting in a democratic society. However, legal issues differ significantly from ethical issues. Law is defined as society's formal rules of conduct or action, recognised as enforceable by a controlling authority such as federal or state government; while ethics refers to a set of moral principles or values that informally govern individuals in a society.

The locus of legal control is external; whereas that of ethics is mostly internal in the person's conscience. Laws are rules that people must obey in order to be legally proper but ethics are rules that people ought to obey so that their conduct is morally proper and their conscience clear. The legal view to an issue implies that legal obligations co-exist with rights. These rights are described as welfare rights and have been granted by law. In contrast; ethical rights involve no legal guarantees.

For example, right to health care is an ethical right as no one is obligated by law to provide and enforce it. A client may choose not to request for care when ill or to be treated by a particular kind of healer, orthodox or unorthodox. Health professionals do however feel obliged to provide health care to those seeking it. As soon as a client willingly submits to be cared for by you, a contract of care is established and you must practice within certain legal constraints that ensure safe and effective care. Failing to do this, you will become liable to prosecution by the legal authority of the society. Thus, whereas legislative duties are mandatory and must be fulfilled, some of the ethical duties might be fulfilled, so long as professional standards are upheld, dropped or disregarded at will. This may lead some people to think their ethical requirements are of less importance than legal requirements. On the country, ethical codes usually have higher requirements then legal standards and they are never lower than the legal standards of the profession.

3.3.3 Types of Ethics

There are two main types of ethics governing an individual's life in a society. They are: Personal and the professional ethics.

Personal Ethics – refer to a person's moral principles and values acquired as the person develops and matures through the life span. An individual's personal code of behaviour might include "ought to do" things such as being honest , spending time in worthwhile activities, helping and being kind to people and the "ought not to do " things like, not stealing, not cheating other people or organisation, or consciously causing harm to others. Personal ethics are influenced by family, religion, education, peer group etc and therefore vary from one individual to another. Personal ethics may change or be modified as a result of age, environmental or situational influence.

Professional Ethics – refers to the formal or informal moral responsibilities peculiar to a profession which are not shared by members of the society. The informal professional ethics are unwritten while the formal ones are the written ethical codes. Members not only agree to subscribe to the ethical codes to govern their conduct but also monitor other member of the profession to ensure conformity to them as well. Failure to conform may earn the individual a dismissal from the profession or suspension.

3.3.4 Purposes of Professional Codes of Ethics

Professional code of ethics serves several purposes that help the professionals to provide efficient and effective service. Some of the purposes include:

- Professional codes of ethics set guidelines to demonstrate levels of minimum practice required to maintain standards of conduct within the profession.
- Ethical codes inform members and the society of the primary goals and values of the profession.
- Ethical codes provide a sign of the profession's commitment to the public it serves.
- Professional ethics allows the people outside the profession to know the ways that members of that profession are expected to consistently act.
- The professional standards help when judging the actions of a professional to see whether it is ethical or unethical. It guides the profession in self-regulation.
- A code of ethics serves as a framework for making ethical decisions as it provides a means of evaluating alternative course of action.
- Ethical code serves as a mark of professional maturity.
- Reminds nurses of the special responsibility they assume when caring for the sick.

Self-Assessment Exercise

i. What is ethics?
ii. Distinguish between ethics and law.
iii. Differentiate between the types of ethics.

3.3.5 Nursing Code of Ethics

Nursing code of ethics is a formal statement of the ideals and values of nursing and ethical principles that serve as standards for nurses‟ actions. It concerns the behaviour that is normally right for a nurse in professional situations.

The need for an ethical code of practice for nursing was perceived in the 19th century. Some religious communities prepared code of practice for their nurses in consonance with the "religious orders" rule of life. Among the earliest evidence of that perceived need in the secular world was the Florence Nightingales pledge formulated by a group of nurses in

1893. It was based on Hippocratic Oath and contained all the expectations from a nurse in that era. The pledge is presented in box 1.

Box 1: The Florence Nightingale Pledge of 1893

I solemnly pledge myself before God and in the presence of this assembly, to pass my life in purity and to practice my profession faithfully.

I will abstain from whatever is deleterious and mischievous, and will not take or knowingly administer any harmful drug.

I will do all in my power to maintain and elevate the standard of my profession and will hold in confidence all personal matters committed to my keeping, and all family affairs coming to my knowledge in the practice of my calling.

With loyalty will I endeavour to aid the physician in his work and devote myself to the welfare of those committed to my care.

Source: Fowler, Marsha, D. in Anavado, A. N; (2002)

Box 2: The Nurses' Pledge

"In the full knowledge of the obligation I am undertaking, I promise to care for the sick with all the skill and understanding I posses, without regard to race, creed, colour, politics or social status, sparring no effort to conserve life, to alleviate suffering and promote health."

"I will respect at all times the dignity and religious beliefs of the patients under my care, holding in confidence all personal information entrusted to me, and refraining from any action which endanger life or health."

"I will endeavour to keep my professional knowledge and skill at the highest level, to give loyal support and cooperation to all members of the health care team. I will do my utmost to honour and uphold the integrity of the nurse."

Source: Nursing and Midwifery Council of Nigeria, (2001)

The pledge was formulated based on the subservient nature of nursing that was operational at the time. Because it no longer has social relevance to the 21st century context of nursing, it was replaced by what is now known as the Nurses‟ Pledge which is recited by students of most schools of nursing either at the beginning or at the completion of their training. The nurse pledge is presented in Box 2.

The realisation that nearly every situation in nursing has its ethical implications and the desire for high quality care for clients in

professional nursing brought about the need for nurses to determine and clarify their values and develop ethical behaviour.
In agreement with this ideal, the American Nurses Association took the lead in 1950 by adopting, for the first time, an elaborate code of ethics for nurses. This has been revised several times. The 1985 version is presented in box 3.

Box 3: American Nurses Association Code for Nurses

1. The nurse provides services with respect for human dignity and the uniqueness of the clients unrestricted by considerations of social or economic status, personal attributes, or the nature of health problems.

2. The nurse safeguards the client's right to privacy by judiciously protecting information of a confidential nature.

3. The nurse acts to safeguard the client and the public when health care and safety are affected by the incompetence, unethical, or illegal practice of any person.

4. The nurse assumes responsibility and accountability for individual nursing judgments and actions.

5. The nurse maintains competence in nursing.

6. The nurse exercises informed judgment and uses individual competence and qualification as criteria in seeking consultation, accepting responsibilities and delegating nursing activities to others.

7. The nurse participates in activities that contribute to the ongoing development of the profession's body of knowledge.

8. The nurse participates in the profession's effort to implement and improve standards of nursing

9. The nurse participates in the profession's effort to establish and maintain conditions of employment conducive to high quality nursing care.

10. The nurse participates in the profession‟s effort to protect the public from misinformation and misrepresentations and to maintain the integrity of nursing.

11.	The nurse collaborates with members of the health professions and other citizens in promoting community and national efforts to meet the health needs of the public.

Source: American Nurses Association in I.B. Kozier, G. Erb, A.J. Berman, K. Burke, (2000).

In 1953, the International Council of Nurses (ICN) adopted her first code of nursing ethics; this has been revised and reaffirmed at various times. The 2000 edition is presented in box 4.

Box 4: The ICN Code of Ethics for Nurses

Preamble

Nurses have four fundamental responsibilities: to promote health, to prevent illness, to restore health and to alleviate suffering

The need for nursing is universal; inherent in nursing is respect for life, dignity, and rights of man. It is unrestricted by considerations of nationality, race, creed, colour, age, sex, politics or social status. Nurses render health services to the individual, family and the community and coordinate their services with those related groups.

The Code
The ICN code of ethics for nurses has four principal elements that outline the standards of ethical conduct.

Elements of the Code

1. Nurse and People

The nurse‟s primary responsibility is to people requiring nursing care. In providing care, the nurse promotes an environment in which the human rights, values, customs and spiritual beliefs of the individual, family and community are respected.

The nurse ensures that the individual receives sufficient information on which to base consent for care and related treatment

The nurse holds in confidence personal information and uses judgment in sharing the information.
The nurse shares with society the responsibility for initiating and supporting actions to meet the health and social needs of the public in particular, those of vulnerable population.
The nurse also shares responsibility to sustain and protect the natural environment from depletion, pollution, degradation and destruction.

2. Nurses and Practice

The nurse carries responsibility and accountability for nursing practice and for maintaining competence by continual learning. The nurse maintains a standard of personal health such that the ability to provide care is not compromise. The nurse uses judgment regarding individual competence when accepting and delegating responsibility.

The nurse at all times maintains standards of personal conduct which reflect well on the profession and enhance public confidence.

The nurse in providing care ensures that use of technology and scientific advances are compatible with the safety, dignity and right of people.

3. Nurse and the Profession

The nurse assumes the major role in determining and implementing acceptable standards of clinical nursing practice, management research and education.
The nurse is active in developing a core of research-based professional knowledge.
The nurse acting through the professional organisation, participates in creating and maintaining equitable social and economic working condition in nursing.

4. Nurses and Co-Workers

The nurse sustains a cooperative relationship with co-workers in nursing and other fields.
The nurse takes appropriate action to safeguard individuals when their care is endangered by a co-worker or any other person.

Source: ICN in A.N. Anarado, (2000)

Professional Nursing Associations of various countries, including Nigeria, have either adopted the ICN code of ethics or formulated their professional nursing ethics to reflect the needs of their socio-cultural environment. The National Association of Nigerian Nurses and Midwives (NANNM) code of ethics culled from the 1973 edition of the ICN code is presented in box 5.

Box 5: Ethical Code for National Association of Nigeria Nurses and Midwives (NANNM)

As a nurse, your fundamental responsibility is four fold: To promote health, to prevent illness, to restore health, to alleviate suffering. Most important is the respect for life, dignity and right of man.

Your primary responsibility is to those who need nursing care regardless of race, creed, religion, culture, values and custom.

You should also hold in sincere confidence personal information about all your clients and use judgment in sharing this information.

As a professional nurse, you carry personal responsibility for nursing practice and for maintaining competence by continuous learning.

When acting in a professional capacity, you should at all times maintain standards of personal conduct, which reflect credit upon the profession.

You must at all times be prepared to share with other citizens the responsibility for initiating and supporting the health and social needs of the public. It is your duty to sustain a co-operative relationship with colleagues in nursing and co-workers in other fields.

You must always take appropriate action to safeguard the individual when his or her care is endangered by a co-worker or any other person.

You and the Profession

You must at all times be prepared to play the major role in determining and implementing desirable standards of nursing practice and nursing education.

You must be active in developing a core of professional knowledge. You must act through the professional organisation; participate in establishing and maintaining equitable, social and economic working conditions in nursing.

Source: National Association of Nigeria Nurses and Midwives (NANNM) Membership's Card.

The ICN code of ethics places on the nurse responsibilities of not only providing nursing care, but also of promoting a suitable environment for care, maintaining effective relationship with other health care providers, advancing nursing knowledge and initiating and supporting action to improve the general health

Also the code addresses the primary goals and values of the nursing profession as well as all those that the nurse is accountable to for her actions. The primary goals and values are described in the preamble of the ICN code of ethics.

Critical analyses of the codes show a reflection of such universal values as:

- Respect for human rights including right to life, dignity and to be treated with respect.
- Autonomy or right to self-determination
- Beneficence (doing good) and non-malfeasance (avoiding violence)
- Justice (equal treatment irrespective of colour, race, age, etc.)

Professional nursing ethics also include what has been described as the rules of action or standards to be followed in practice. The four elements of the ICN code of ethics--nurses and people, nurses and practice, nurses and the profession and nurses and co-workers, give a framework for the standards of conduct.

Although ICN code of ethics provides a good framework for ethical decision-making in nursing, it will have meaning only if it is applied to the practice of nursing and health care. The ICN has gone further to show the application of the elements of the ICN code.

Table 1: Applications of the Element of the ICN Code of Ethics for **Nurse Element of the Code #1: Nurse and People**

Practitioners and Managers	**Educators and Researchers**	**National Nurses Association**
Provide are that respects human rights and is sensitive to the values, customs and beliefs of people.	In curriculum include references to human rights, equity, justices, solidarity as the basis for access to care.	Develop position statements and guidelines that support human rights and ethical standards.
Provide continuing education on ethical issues.	Provide teaching and learning opportunities for ethical issues.	Lobby for involvement of nurses in ethics review committees.
Provide sufficient information to permit informed consent and the right to choose or refuse treatment.	Provide teaching and learning opportunities related to informed consent.	Provide guideline, position statements and continuing education related to informed consent.

Use recording and information management systems that ensure confidentiality.	Introduce into curriculum concepts of privacy and confidentiality.	Incorporate issues of confidentiality and privacy into a national code of ethics for nurses.
Develop and monitor environmental safety in the work place.	Sensitise students to the concepts of privacy and current concerns.	Advocate for safe and healthy environment.

Element of the Code #2: Nurse and Practice

Establish standards of care and a work setting that promote quality care.	Providing teaching learning opportunities that foster lifelong learning and competence for practice.	Provide access to continuing education through journal, conference, distance education etc.
Establish systems for professional appraisal, continuing education and systematic renewal of license to practice.	Conduct and disseminate research that shows links between continual learning and competence to practice.	Promote healthy lifestyle for nursing professionals. Lobby for healthy work places and services to nurses.

Element of the Code #3: Nurse and the Profession

Set standards for nursing research, education and management.	Provide teaching/learning opportunities in setting standards for nursing practice, research, education and management.	Collaborate with others to set standards for nursing education, practice, research and management.
Foster work place support for the conduct, dissemination and utilisation of research related to nursing and health.	Conduct, disseminate and utilise research to advance the nursing profession.	Develop position statements, guidelines and standards related to nursing research.

Promote participation in nurses‟ association so as to create favourable socioeconomic conditions for nurses.	Sensitise learners to the importance of professional nursing associations.	Lobby for fair social and economic working conditions in nursing. Develop position statements and guidelines in workplace issues.

Element of the Code #4: Nurse and Co-Workers

Create awareness of specific and overlapping functions and the potential for interdisciplinary tensions.	Develop understanding of the role of other workers.	Stimulate co-operation with other related disciplines.
Develop workplace systems that support common professional ethical values and behaviour.	Communicate nursing ethics to other professions.	Develop awareness of ethical issues of other profession.
Develop mechanisms to safeguard the individuals, family or community when health care personnel endanger their care.	Instill in learners the need to safeguard the individual, family or community when health care personnel endanger care.	Provide guidelines, position statement and discussions related to safeguarding people when health care personnel endanger their care.

Source: ICN, (2000) In Anarado, A. N. (2002)

3.4 Summary

Nursing code of ethics addresses the primary goals and values of nursing. It is important that nurses apply the code in nursing education, clinical practice, management and research. This way the goal of nursing will be achieved and the values maintained.

In this unit you have learnt that:

- Nursing code of ethics is a formal statement of the ideals and values of nursing and ethical principle that serve as standards for nurses actions.

- Though ethics and law are similar in that they both relate to rules and conduct they are different in terms of locus and in the ways they view issues
- The purposes of professional code of ethics among others are:

a) It informs members and the society of the primary goals and values of the profession.
b) It sets levels of minimum practice required to maintain standards of conduct within the profession.

- The International Council of Nurses and nursing associations of various countries including Nigeria have adopted nursing code of ethics and this serves as a framework for the standards of conduct expected of you. It is important that you know it and use it

3.5 References/Further Reading/Web Resources

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UNIT 4 REGULATION OF NURSING PRACTICE

Unit Structure

4.1 Introduction

Nursing is a caring profession which has relevance and direct impact on the life, health and well-being of individual, families and communities. It is therefore important to regulate the practice of nursing to ensure that standards are maintained to achieve safe practice. The regulation of nursing is achieved though credentialing, and standard of practice. This unit examines the issues of credentialing, standard of practice and the role of the Nursing and Midwifery Council of Nigeria (NMCN) in regulating nursing practice in Nigeria.

4.2 Objectives

By the end of this unit, you should be able to:

- explain the issues in credentialing
- explain the issues in standards of nursing practice
- discuss the role of the nursing and midwifery council of Nigeria in regulating nursing practice in Nigeria.

4.3 Main Content

Issues in Credentialing

Credentialing is the process of determining and maintaining competence in nursing practice. The credentialing process is one way by which the nursing profession maintains standards of practice and accountability for the educational preparation of its members. Credentialing activities include certification, registration, licensure and accreditation.

4.1.1 Certification

Certification is the voluntary practice of validating, by a written document, that an individual has met the minimum standards of competence in a specialty area. Certification in nursing therefore implies validation that the nurse has met the minimum standards for competence and safe practice in the area of nursing for which he/she is issued a certificate. In Nigeria such areas may include: general nursing, midwifery, public health, psychiatry, peri-operative nursing, orthopedics, anesthesiology, accident/emergency, pediatrics, ophthalmology, intensive care, nursing administration, nursing education, public health, nursing education.

4.1.2 Registration

Registration is the listing of an individual's name and other information in the official register of a governmental or a non-governmental agency. For nursing, the registering agency is the Nursing Council. Thus in Nigeria, the Nursing and Midwifery Council of Nigeria has the responsibility of registering nurses who have successfully gone through a programme that is approved and accredited by it. In the council, there are different registers for the different nursing educational programmes. In Nigeria there are registers for those specialty areas for which nursing and midwifery council of Nigeria issue certificate. This implies that the nurse would have completed the stipulated nursing studies and passed the qualifying examinations. Registration offers the nurse the permission to use a particular nursing title such as registered nurse (RN), registered midwifery (R.M), registered paediatrics' nurse (RPN), etc.

4.1.3 Licensure

Nurse practice Acts protect the nurse‟s professional capacity and legally control nursing practice through licensing. Licenses are legal permits granted by a government agency to individuals to engage in a venture or

business such as the practice of a profession and to use a particular title. In nursing, licenses are issued only to registered nurses that have completed stipulated nursing course in a programme accredited by the nursing council, passed the qualifying examination and paid the required fees. A particular jurisdiction or area is covered by the license.

Licensure is open to renewal depending on the rules that obtain in a country. For example, in Nigeria, nursing licensure is renewable every three years, after showing evidence of having undertaken a continuing education programme for professional development.

For a profession or occupation to obtain the right to license its members, it generally must meet three criteria:

- There is a need to protect the public‟s safety or welfare.
- The occupation is clearly delineated as a separate distinct area of work.
- There is a proper authority to assume the obligations of the licensing process, for example, for nursing, the state or provincial boards of nursing like the Nursing and Midwifery Council of Nigeria.

4.1.4 Accreditation

Accreditation is a process by which a private organisation or government agency such as the Nursing and Midwifery Council of Nigeria appraises and grants accredited status to institutions, programmes or services that meet predetermined structure, process and outcome criteria. This is often a precondition for a registering or licensing body to accept products of such programme for registration or licensure.

In Nigeria, minimum standards for basic nursing education programmes and other nursing programmes are established by the Nursing and Midwifery Council of Nigeria. The council also has the function of reaccrediting approved educational programmes after sometime, to maintain desired standards

Box 1: Credentialing Activities

- Certification
- Registration
- Licensure
- Accreditation

4.2 Standards of Practice

Another way the nursing profession attempts to ensure that its practitioners are competent and safe to provide service is through the establishment of standards of practice. Establishing and implementing standards of practice are major functions of a professional organisation. The purpose of standards of clinical nursing practice is to describe the responsibilities for which nurses are accountable. For example, the Canadian Nursing Association (CAN) standard for nursing practice is based on the nursing process and is as follows:

i. Assessment

The nurse collects patient health data. Patients that report to you come with problems and expectations that you will assist them to solve their problems. You cannot assist them effectively if you do not know what the problem is. The only way to find out is through systematic collection of data.

ii. Diagnosis

The nurse analyses the assessment data in determining diagnoses. Once you have collected a comprehensive assessment data. You should analyse this to identify what the actual or potential problems of the clients are:

iii. Outcome identification

The nurse identifies expected outcomes individualized to the patients. This implies that as soon as you know what the patient‟s problems are, you try and determine the status or the state in which you will want the patient to be by the time you have provided nursing interventions.

iv. Planning

The nurse develops a plan of care that prescribes interventions to attain expected outcomes. Once you determine the state in which you want the patient to be at the end of your intervention, you should select nursing interventions that will assist the patient to achieve that outcome and put them in a care plan.

v. Implementation

The nurse implements the interventions identified in the plan of care. Having drawn your care plan, you are expected to get together the things

that you require to implement those interventions and then actualize the care plan.

vi. Evaluation

The nurse evaluates the patient‟s progress toward attainment of outcomes. Having implemented the care plan, you are expected to observe for evidence of the effect of the intervention on your patient‟s condition. Following this you make a judgment on the outcome, whether it was successful or not.

Self-Assessment Exercise

i. Why is it necessary to regulate the practice of nursing? ii. How is the regulation of nursing practice achieved?

4.2.1 Standards of Professional Performance

i. Quality of Care

The nurse systematically evaluates the quality and effectiveness of nursing practice. You can determine the quality of your practice by determining the health benefits of your practice to your patients and the health risks. If your practice brings great health benefits and no health risks to your patient then your practice is of high quality. If on the other hand, your practice brings the patient great health risk and little health benefits then the quality of your care is said to be poor.

ii. Performance Appraisal

The nurse evaluates his/her own nursing practice in relation to professional practice standards and relevant status and regulations. As you go about your duty as a nurse, you must ask whether what you are doing, you are doing is it according to the prescribed standards. For example, you should ask yourself such questions as “is my diagnosis of the patient’s problem based on comprehensive assessment?” “Are the selected interventions appropriate to achieve the stated outcomes given the available resources, patient’s strengths and limitations and the other therapy?” “Are my actions ethical?” etc.

iii. Education

The nurse acquires and maintains current knowledge in nursing practice. Passing the Nursing and Midwifery Council of Nigeria’s final qualifying examination, registering and thus obtaining the license to practice should not be the end of the road for you. You must keep abreast of

current knowledge in nursing. You achieve this through attending workshops, seminars and update courses. This way you will be well equipped to provide care that is safe.

iii. Collegiality

The nurse interacts with, and contributes to the professional development of peers and other health care providers as colleagues. It is important that you realise that providing health care to patient is teamwork and in the process, members of the team reinforce each other and thereby make each person more effective.

v. Ethics

The nurse's decisions and actions on behalf of patients are determined in an ethical manner. All your decisions and actions must be ethical for you and the patient to be protected.

vi. Collaboration

The nurse collaborates with the patient, family, and other health care providers in providing patient care. The information you need to be able to formulate appropriate nursing diagnoses for the patient will come from the patient and family members and some of them may come from other health care providers so you have no choice than to collaborate with them for you to be effective. Again after discharge from the hospital, the patient will go home to his family so it is important that you collaborate with his family members. This will make them understand the patient's condition and know what they should do to help.

vii. Research

The nurse uses research findings in practice. This implies that you should get involved in research and use research findings to provide appropriate care for patients.

viii. Resources Utilisation

The nurse considers factors related to safety, effectiveness and cost in planning, and developing patient care. You must endeavour to plan and implement care within the available resources and ensure that the care you provide is congruent with other therapies so that synergism will be achieved.

Knowledge of the standards of nursing practice will help you to make appropriate decisions about patients care and to implement care that is safe and will result in resolution of patient's problem and thus meet patient's expectations.

Standards are very important in nursing for the following reasons:

- They reflect the value and priorities of the nursing profession.
- They provide direction for professional nursing practice.
- They provide a framework for the evaluation of nursing practice.
- They define the profession accountability to the public and the client outcomes for which nurses are responsible.

Box 2: Elements of standards of professional performance

- Quality of care
- Performance appraisal
- Education
- Collegiality
- Research Resource utilisation

4.3 Role of Nursing and Midwifery Council of Nigeria in Regulating Nursing Practice in Nigeria

Nursing and Midwifery Council of Nigeria (N&MCN)

The law that established the N&MCN was first enacted in 1947 through the efforts of a faction of Nigerian nurses, known then as Professional Association of Trained Nurses of Nigeria (PATNON) who were trained overseas. This group convinced the Nigerian government to regulate the nursing profession in Nigeria by registration as it is done in other countries. The legislation which was based on the code of ethics of the International Council of Nurses (ICN), translated the basic principles of the nurses code of ethics to enforceable rules of law.

The law was amended in 1957, 1959, 1970, and again in 1979. The council which started as two bodies; the midwives board and the nursing council metamorphosed into one big effective body by the enabling decree 89 of 1979. Since then the N&MCN has grown in status, functions, and responsibilities and as one of the foremost statutory professional regulating body with the largest scope, jurisdiction and professional personnel to control and supervise. According to the provisions in paragraph (d) subsection (2) of section (1) of the decree,

N&MCN is the statutory body responsible for the regulation and control of nursing and midwifery practice in Nigeria.
The duties of N&MCN as it relates to the regulation of nursing practice are summarized as follows:

a. Determining what standards of knowledge and skills are to be attained by persons seeking to become members of the profession of nursing and midwifery and reviewing those standards from time to time as circumstances may require.

b. Securing in accordance with the provisions of the Act the establishment and maintenance of a register of persons entitled to practice the profession and the publication from time to time of the list of those persons.

c. Regulating and controlling the practice of the nursing profession in all its ramifications.

d. Maintaining in accordance with the Act, discipline within the profession and

e. Performing the other functions conferred upon the council by the Act.

4.4 Summary

Regulation of nursing practice is very important if we must be sure that the care we provide is of quality that will solve patients‟ problems and meet their expectation.

In this unit you have learnt that:

- Credentialing is a process of maintaining competence in nursing practice and that credentialing activities include; certification, registration, licensure and accreditation.
- The purpose of standard of clinical nursing practice is to describe the responsibilities for which nurses are accountable
- The nursing and midwifery council of Nigeria is the statutory body responsible for regulation and control of nursing and midwifery practice in Nigeria and has such duties as determining standards of knowledge and skills to be attained by prospective nurses, regulating and controlling the practice of the nursing profession in all its ramifications among others.

4.5 References/Further Reading/Web Resources

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MODULE 2 LEGAL CONCEPTS RELEVANT TO NURSING AND NURSES' ROLES

UNIT 1 BASIC LEGAL CONCEPTS

Unit Structure

1.1 Introduction

Nursing practice has attained status to the extent that it is governed by many legal concepts. It is important that you know these concepts so that your decisions and actions will be consistent with current legal principles and thereby protect yourself from liability. This unit examines the general legal concepts and includes; the definition of law, types of law, principles of law and the civil judicial process.

1.2 Learning Outcomes

By the end of this unit, you should be able to:

- define law
- explain the functions of law in nursing
- explain the sources of law
- differentiate among the different types of law

- categorize the types of law that affect nurses.

1.3 Main Content

3.1.1 Definition of Law

Law is defined as those rules made by humans which regulate social conduct in a formally prescribed and legally binding manner. It could be said to refer to some written and unwritten rules derived from customs and as formal enactment which are recognised by the people as binding on them and could be imposed upon them by some appropriate sanctions. The implication is that when you do not keep these rules, you will be punished by law.

3.1.2 Functions of Law in Nursing

The law serves a number of functions in nursing. The functions relate to issues regulating the practice of nursing and the relationship between the nurse practitioner and the patient, especially in relation to dignity of the human person, regulation of the nursing profession, confidentiality of information between the nurse and patients and the important issue of consent. This implies the conduct required of you which can be determined from the nurses‟ pledge which you will subscribe to at your induction and which you must adhere to in practice as it is binding on you. It is meant to enable you maintain universally acceptable standards of practice as well as meet demands of the Nursing and Midwifery Council of Nigeria with regard to the ethics of professional practice.

Thus, law

- Provides a framework for establishing which nursing actions in the care of clients are legal
- Differentiates the nurses‟ responsibilities from those of other health professionals
- Helps establish the boundaries of independent nursing action
- Assists in maintaining a standard of nursing practice by making nurses accountable under the law.

3.1.3 Sources of Law

There are several sources of law

Legislative (Statutes) – law enacted by statute or Acts of parliament or the legislature is known as statutory law. Statutory laws can be made at the federal, state or local government levels. When federal and state

laws conflict, federal laws supersedes, likewise state laws supersede local laws.

Customs and Traditions - Laws that derive from customs and tradition of the people over the years, but which are recognised by the constitution are known as customary laws. Examples include marriage rights, property ownership, etc.

Courts – Laws that evolve from court decisions are referred to as common laws or decisional laws. In addition to interpreting and applying constitutional or statutory laws, courts are also asked to resolve disputes between two parties. In the process of doing this, decisions are made and these result in common laws. Common laws are continually being adapted and expanded. In deciding specific controversies, courts generally adhere to the doctrine of "to stand by things decided", which usually refer to following precedence. In other words, to arrive at a ruling in a particular case, the court applies the same rules and principles applied in previous similar cases until it is either modified or overruled.

Constitution - The constitution of a country is the supreme law of the country. It establishes the general organisation of the federal governments, grants certain powers to them, and places limits on what federal and state governments may do. Constitutions create legal right and responsibilities and are the foundation for a system of Justice.

Administrative authorities – In most cases, the process of law making follow some basic steps but occasionally, some administrative authorities such as the president, governors, ministers or commissioners make some general rules. Since such rules are not made by legislatures they are simply referred to as regulation or ordinances. An ordinance may simply be defined as the statement of general norms made by a chief executive of government without passing through the parliament.

A code is a term that is very similar to ordinance in nature. Codes generally come from the chief executive rather than parliament but unlike the ordinance, the general aim of the code is to give general guidelines for executing an existing law or statute. Example is the nursing code of ethic, which guides you in your practice of nursing. Also the nursing and midwife council of Nigeria can also come up with guidelines that will direct the practice of nursing in Nigeria. Another type of law is the decree. A decree is a law made by a supreme authority of the state and it is usually employed during military regimes. An edict is similar to decree but while decree is reserved for the head of state, edict is used to describe the laws made by state military governors.

Self-Assessment Exercise

Explain the functions of law in nursing.

3.1.4 Types of Law

The types of law derive from the type of relationship that it is supposed to govern. That is, whether it governs the relationship of private individuals with government and or with each other. This implies that there are two main types of law, public and private law:

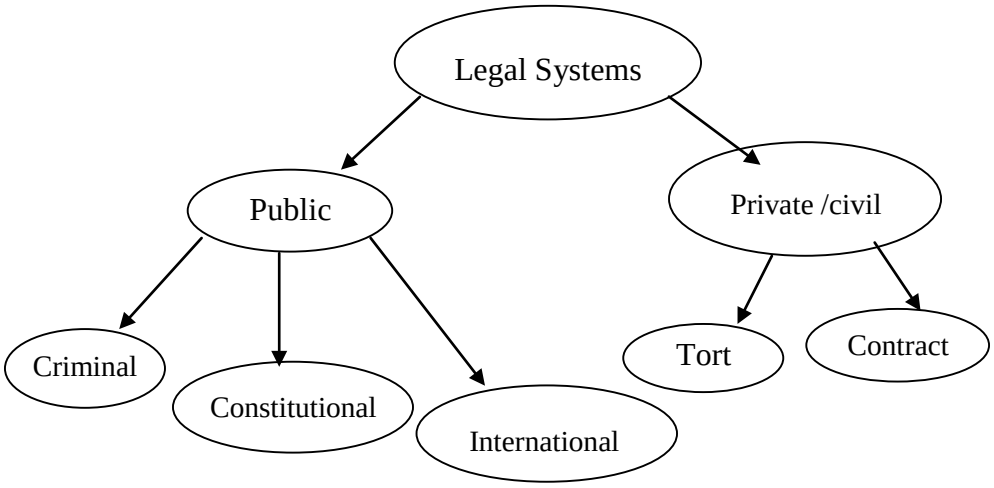

Fig 1: The Systems of Law

- **Public law:** Public law refers to the body of law that deals with relationships between individuals and government agency. It includes constitutional, international, criminal laws and other numerous regulations designed to enhance societal objectives. Failure to comply with such laws might lead to criminal legal actions and penalties. Criminal law is an important aspect of public law and it deals with actions against the safety and welfare of the public. Examples of such actions include; homicide, manslaughter, theft, arson, rape, and illegal possession of controlled drugs or arms. The implication is that if you commit a crime, you have committed an offense against society.

- **Private law** or civil law is the body of law that deals with relationships between private individuals. It is categorized as contract law and tort law.

- **Contract law**: This involves enforcement of agreement among private individuals or payment of compensation for failure to fulfill the agreements. A contract is a legally binding agreement

> that imposes rights and obligations on the parties and is enforced by the court of law. A contract may be written or orally expressed or implied. A contract is expressed when the two parties discuss and agree orally or in writing to its terms. For example, the contract between you and your employer. In your employment you are expected to provide services according to the terms of your employment and your employer is supposed to provide the conditions under which you will provide the service.

Implied contract is one that has not been explicitly agreed to by the parties, but the law considers to exist. For example, in contractual relationship between you and clients, the clients have a right to expect that you have the competence to meet their needs. You on your part have a responsibility to remain competent. You should therefore make necessary efforts to remain competent. Try and update your knowledge and skills on a regular basis through; reading about updates and innovations in nursing and related professions, attending workshops and update courses and seminars, etc. Contractual relationships pertinent to nurses include; nurse/client, nurse employer and client/agency relationships.

It is important that you note that the right to sue in a contract does not depend on the fact that the plaintiff was injured but on the existence of a contract between him/her and the defendant. The rights and duties involved in the agreement are devised by the parties concerned and not fixed by the law. A person who is not a party to a contract cannot sue for breach of it, even if he/she suffers injury as a direct result.

Tort law is designed to protect individuals and organisations from civil wrongs other than breach of contract. Knowledge of the law of tort is important for you because most of the civil cases that result from nursing activities belong to the category of tort. Some examples of tortuous liabilities that are applicable to nurses include: negligence and malpractice invasion of privacy, assault, battery, libel, slander and false imprisonment. Assault and battery give rise to criminal and civil liability. Civil law requires that the plaintiff demonstrates by a majority of evidence, that the defendant is liable for the damages caused to his/her person or property.

Note that while tort aims principally at the prevention of harm or compensation for harm, the core of contract is the effort to enforce promises that were made. The major difference between criminal and civil law is the potential outcome for the defendant. If found guilty in a criminal action, the accused may lose money, be jailed or be executed. As a nurse you could lose your licence to practice. The action of a law

suit is called litigation and lawyers who participate in law suit are referred to as litigators.

1.3.5 Principles of Law

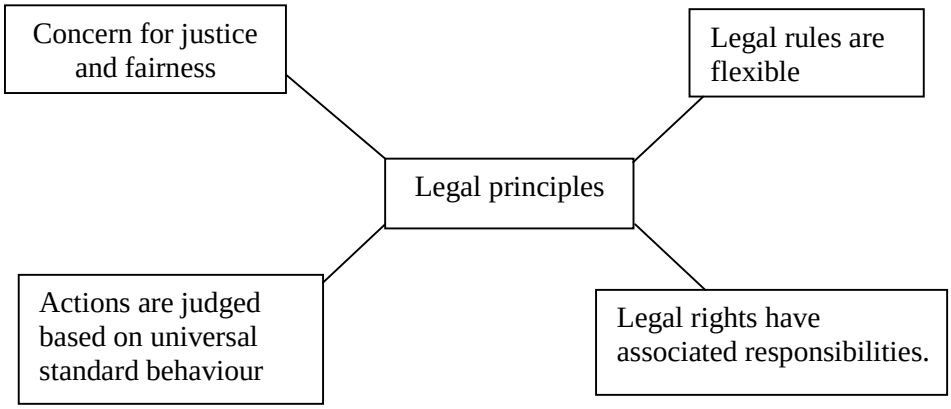

Fig 2: Adapted from Anarado, (2002). Principles of Law

According to Anarado (2002); the system of law rests on four principles that include:

1. Law is based on a concern for justice and fairness. The purpose of law is to protect the rights of one party from the transgressions of another by setting guidelines for conduct and mechanisms to enforce those guidelines. Law uses punishment to inhibit antisocial behaviour and to apply a just measure of retribution. This may be in form of a fine or a period of time in prison. However for claims of damages for negligence, financial reparation are regarded as compensation for injury sustained and not as a punishment for wrong inflicted. The court relies on the evidence before it in order to pass judgment. At times, an apparently guilty person may be set free on technical ground of lack of evidence.

2. Actions are judged on the basis of a universal standard of what a similarly educated, reasonable and prudent person would have done under similar circumstances. The courts would therefore take a decision on any case before it, using this reasoning.

3. Legal rules are flexible: The law sets the parameters for adjudication, leaving room for the courts to interpret it further. Hence many rules are broadly stated and sometimes unclear, allowing considerable scope to choose a course of right action and permit further elucidation by the courts.

4. Every right has responsibility attached to it on the part of the person claiming such right. Each individual has rights and responsibilities. Rights are privileges or fundamental powers that individuals possess. Right granted by law is known as welfare rights as distinguished from ethical rights. The granting of such welfare rights automatically implies corresponding duties and responsibility. If clients have the right to health care, they have the responsibility to give the information required of them to help the health care providers to render the care. The health care provider who has the right to his/her monthly salary has the obligation or responsibility to provide the service for which he/she is paid salary. Failure to meet one's responsibilities can endanger one's right and in some cases may lead to litigation.

1.3.6 The Civil Judicial Process

The judicial process primarily functions to settle disputes peacefully and in accordance with the law: A lawsuit has strict procedural rules. There are generally five steps in the process viz.

- A document called a complaint is filed by a person referred to as the plaintiff, who claims that his/her legal rights have been infringed upon by one or more persons, referred to as defendant(s).
- A written response, called an answer, is made by the defendant(s).
- Both parties engage in pretrial activities referred to as discovery in an effort to gain all the facts of the situation.
- In the final of the case, all the relevant facts are presented to a jury or a judge.
- The judge renders a decision, or the jury renders a verdict. If the outcome is not acceptable to one of the parties, an appeal can be made for another trial.

During a trial, a plaintiff must offer evidence of the defendant's wrong doing. This duty of proving an assertion is called the burden of proof. You, as a nurse may be called to testify in a legal action for a variety of reasons. You may be a defendant in a malpractice or negligence action or may have been a member of the health team that provided care to plaintiff. It is advisable that any time you are asked to testify in such a situation to seek the advice of an attorney before providing testimony. In most cases the attorney for the employer will provide support and counsel during the legal case. If you are the defendant, however, it is advisable that you retain an attorney to protect your own interests.

Again, you may be asked to provide testimony as an expert witness. An expert witness is one who has special training, experience or skill in a relevant area and is allowed by the court to offer an opinion on some issues within the nurse's area of expertise. Such a witness is usually called to help a judge or jury understand the evidence pertaining to the extent of damage or the standard of care.
This implies that you must have sound knowledge of your practice area so as to be of help to the court.

1.4 Summary

Knowledge of basic legal concepts is important to you because in your practice as a nurse you will encounter situations that have legal implications. You therefore need this knowledge to be able to protect yourself and your patients and thereby prevent litigation.

In this unit, you have learnt that:

- Laws are those rules made by humans which regulate social conduct in a formally prescribed and legally binding manner.
- Law serves a number of functions that relate to issues regulating the practice of nursing and the relationship between the nurse practitioner and the patient.
- Sources of law include; legislation, customs and tradition, courts, constitution and administrative authorities.
- Two main types of law are public law and private law and each has its subdivisions.
- The system of law rests on four principles which include: law is based on a concern for justice and fairness, actions are judged on the basis of universal standards, legal rules are flexible and legal rights have associated responsibilities.
- The judicial process primarily functions to settle disputes peacefully and in accordance with the law.

1.5 References/Further Reading/Web Resources

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UNIT 2 RIGHTS AND RESPONSIBILITIES IN CLIENT CARE

Unit Structure

2.1 Introduction

The clients that enter health care institutions come with some rights, needs and expectations. The nurse by education is prepared to take her place in the health team and contribute to meeting the needs and expectations of clients. How effective the nurse becomes will depend on her understanding of what the rights needs and expectations of the client are and her responsibility in meeting these. This unit will examine the concept of right, the rights of the client in health care, nurses responsibilities in health care and ways in which the nurses respect clients‟ rights in client care.

2.2 Learning Outcomes

By the end of this unit, you should be able to:

- explain the concept of right
- outline the rights of client in health care
- explain the nurses responsibilities in health care delivering show how client’s bill of rights is applied in nursing care.

2.3 Main Content

2.3.1 Concept of Right

Right is a claim to a particular privilege. For example, people who have paid their electric bill have a right to have electricity. Similarly, a person, who has paid for a particular health care has a right to that health care. Rights can be legal or ethical.

Legal right is that which a person is entitled to; that is, the right to do something, or to receive from another person whose duty is imposed within the limits of the law. This implies that legal rights co-exist with obligation. Obligations is willingness to accept the burden of a given task for whatever reward, as the result of success or risk as a result of failure one may see in the situation. For example, the worker who has the obligation to perform certain services for an employer has the right to receive the agreed salary but will also cope with the difficulties or loses that may go with the job. Violation of a legal right may subject the individual to a civil or criminal liability.

Ethical rights impose on the professionals the obligation to provide services to those who seek such services. Ethical rights do not involve Legal guarantee because no authority exists to enforce the right. For example, the right to work and the right to health care are ethical rights. There is no law in Nigeria that stipulates that one must be employed by government or private sector. For this reason, people seek for job anywhere. Also people can seek medical care from anywhere- herbalist, orthodox or prayer home. Health care is an ethical obligation because no one is obligated by law to provide it. However, health care professionals feel obligated to provide health care to those who seek it and have paid for it. For example, a client with a wound who has paid for dressing, has a right to have the dressing done. Violation of an ethical right may result in reprimand, censure, suspension or expulsion from the profession.

Society today is looking closely at the moral and ethical quality of its actions and motive. This trend has resulted in a closer scrutiny of what may be considered as morally right or wrong in our relationships with others. This has led to the formulation of bills of right. There are many bills of rights. E.g. Human rights bill, the rights of the child, patients‟ bill of rights, etc.

2.3.2 Rights of Clients in Healthcare

The movement for client's right in health care arose in the late 1960s. The broad goals of the movement were to improve the quality of health care and to make the health care system more responsive to client's needs. Because of knowledge explosion and technological advances, today's clients are more knowledgeable and indicating desire to participate in the decision that concern them when they are ill thus raising issues of patient's rights. In response to this, patients" bill of rights emerged. The American Hospital Association (AHA) in 1973, published a patient's bill of rights to protect the rights of hospitalized clients. This was revised in 1992.

In early 1997, the former American president, Bill Clinton, appointed the advisory commission on consumer protection and quality in the health care industry to develop a consumer bill of rights in health care and to provide recommendations as to how the rights will be enforced at the federal, state and local levels. By the end of the year, the commission produced the patients" bill of rights with the following objective:

- To strengthen consumer confidence by assuring the health care system is fair and responsive to consumers" needs, provide consumers with credible and effective mechanisms to address their concerns and encourage consumers to play an active role in improving and assuring their health.
- To reaffirm the importance of a strong relationship between clients and their health care professionals.
- To reaffirm the critical role consumers play in safeguarding their own health by establishing both rights and responsibilities for all participants in improving health care.

The eight principal areas of rights and responsibilities include:

- **Information disclosure –** clients have the right to receive accurate, easily understood information to help them make informed decisions about their health plans, professionals and facilities
- **Choices of providers and plans –** consumers have the right to a choice of health care provider that is adequate to ensure access to appropriate high quality health care.
- **Access to emergency service –** consumers have the right to access emergency health care service when and where the need arises
- **Participate in treatment decisions –** consumers have right and responsibility to fully participate in all decisions related to their

health care. Consumers who are unable to fully participate in treatment decisions have the right to be represented by parents, guardian, family member or other conservators.

- **Respect and non-discrimination –** consumers have the right to considerable, and respectful care from all members of the health care system at all times and under all circumstances. An environment of mutual respect is essential to maintain a quality health care system.
- **Confidentiality of health information –** consumers have the right to communicate with health care providers in confidence and to have the confidentiality of the individually identifiable health care information protected.
- **Complaints and appeals –** consumers have the right to fair and efficient process for resolving differences with their health plans, health care providers, and the institutions that serve them, including a rigorous system of internal review and an independent system of external review.
- **Consumer responsibilities –** it is necessary to expect and encourage consumers to assume reasonable responsibility for their health and that of others.
- **Full copy of the patients' bill of right and responsibilities –** the consumer should have a copy of the patients‟ bill of rights. This bill was adopted in 1998.
- If you look at this patients‟ bill of rights closely and look at the code of ethics for nurses that we looked at in module one unit 3, you will see that the code of ethics has tried to accommodate these rights. It is important that you know these rights and try to respect them by carrying out your responsibilities as a nurse effectively.

2.3.3 Nurses Responsibilities in Healthcare

Responsibility is an obligation on the part of a person to perform some act for which he/she becomes accountable. The nurses‟ responsibilities are embedded in the code of ethics for nurses. The ICN code outlined the four fundamental responsibilities of nurses as follows: to promote health, to prevent illness, to restore health, and to alleviate suffering. These responsibilities are to all people irrespective of age, colour, creed, culture, illness, disability, gender, nationality, politics, race or social status. This implies that you must make decisions on aspects of client‟s health and take steps to implement the decisions. To be effective, you must carry out comprehensive assessment of the client to identify his/her needs and problems, plan and implement to meet the needs and solve the problems.

The ICN code went further to outline nurses' responsibilities specific to people, the nursing profession, co-workers and for nursing practice. (Refer to discussion on the ICN code4 of ethics for nurses in module one unit 3). For you to be able to assume the major role in determining and implementing acceptable standards of clinical practice, you must engage in continual learning. You must attend workshops, conferences and update courses that form basis for re-licensing for practice. You must be aware of social and technological changes that impact on the needs and expectations of the consumers of nursing care, advances in nursing knowledge that improve standards and quality of nursing care and apply them in a manner that is compatible with the safety, dignity and right of people. Armed with this knowledge, you will be able to assess clients well enough to identify their needs and problems, plan and implement evidence – based care that is geared toward solving the problems of the clients, meeting their needs, ensuring satisfaction of the consumers of health care and thereby increasing the consumers" confidence in the nursing profession.

It is also your responsibility to maintain personal and environmental hygiene, protect yourself from danger in the work place, rest, exercise and engage in all other activities that promote health and prevent illness.

In all these responsibilities, the nurse is accountable for her actions and neglect or carelessness in carrying out any of the responsibilities may expose the nurse to liability.

Accountability implies being answerable and responsible for one"s conduct. As a nurse you have a duty to provide care for clients according to law and you will be held responsible for your actions. There are four areas of accountability identified for nurses in the code of ethics. They include:

- Accountability to society – whatever you do impact on society so society will hold you responsible.
- Accountability to the employer under a contract of employment.
- Accountability to the client under existing law provision.
- Accountability to the profession.

Professional accountability means using your professional judgement and being answerable for it. This implies decision making and an obligation to explain and justify actions taken. As a nurse you are privileged to be allowed to make decisions about areas of care based on your knowledge, skills and experience. These quite often are life – saving decisions or decisions that have huge potential impact on your client. You are expected to be able to justify the basis on which your decisions were made if required to do so.

This implies that there is both a right and a duty attached to professional accountability. In recognition of your autonomy in the responsibility of providing nursing care, there is a concomitant responsibility to act in the best interests of the client.

Student nurses cannot be professionally accountable because they are not entered on the professional register, but they are accountable in the other three areas. For example, a registered nurse may delegate the task of dressing a wound to a student. The student is accountable or answerable for any harm he/she causes the client and therefore, should not do the dressing if he/she does not feel competent to do so. The registered nurse, however, retains the professional accountability in terms of ensuring the correct materials are used for the dressing and for ensuring that the student is, in the registered nurses opinion, competent to carry out the dressing.

Self-Assessment Exercise

1. Outline the objectives of the patients bill of rights.
2. Outline the eight principle areas of the rights and responsibilities of clients.

2.3.4 Application of Clients' Bill of Rights in Nursing Care

The nurse who knows that her fundamental responsibilities are to promote health prevent illness, restore health, and alleviate suffering and that the client has the right of access to appropriate high quality health care will educate the clients on activities they will engage in to promote their health and prevent illness. It is important that you know these activities and use every opportunity to inform the clients of them. For restoring health and alleviating suffering, you should use the nursing process format to carry out proper assessment and accurate diagnosis of clients and then plan and implement quality care that will meet the health needs of the client and ensure his satisfaction. In doing all these you should handle the clients with respect and dignity and provide the care equitably to all who need it.

You should promote an environment in which the rights, values, customs and spiritual beliefs of the individual, family and community are respected. You should not impose your own values, customs and belief on the client. If you find the client's values and beliefs are such that are detrimental to the health of the client and will affect the care plan adversely, you should provide information that will help the client see the problems in such beliefs and values and the need to clarify and redefine them (Refer to the discussions on clarifying client's value in

module one unit 1). You should inform the client of available options from which he/she can choose those that will impact positively on his/her health. This way, the client‟s right to participate in treatment decisions and to choose treatment plan would not be infringed on.

You should also ensure that the client receives sufficient relevant information on which to base consent for care and related treatment and that you hold in confidence personal information given by the client and that you use judgment in sharing the information. This implies that in determining and implementing care, you should work with the client and find out how much the client knows about his illness and the management of his problem. You should in turn provide information that will help the client to clarify issues, correct misconceptions he/she may hold and increase knowledge about his/her condition and the necessary care. This will help the client to make informed choices and to work toward promotion of his own health and that of others. During this interaction with the client, the client may give you intimate and private information, you should maintain the confidentiality with which the information was given and share it only if the client gives his consent or when it becomes absolutely necessary to do so. By doing these, you will be complying with such rights of the client as information disclosure and confidentiality of health information.

Since, as a nurse, you share with society the responsibility for initiating and supporting actions to meet the health and social needs of the public, in particular those of vulnerable population, you should work with individuals, families, and communities to identify their health and social needs, plan to meet these needs, implement and evaluate such plans that they may have agreed upon. Being the professional that carries responsibility and accountability for nursing practice, you should direct and co-ordinate these activities.

In all the activities, you should encourage the client to take responsibility for certain aspects of his care. In delegating assignments to the client, you should consider his/her capability at particular times. For example, when the client is acutely ill, he/she may not have the energy nor be in the right frame of mind to participate fully in his/her care. You should take charge of those aspects of care that the client cannot do for himself but would have done if he had the necessary strength. This helps to conserve the client's energy for such activities, as respiration, digestion, etc, that no one can carry out for him/her. As the client's condition improves, you should gradually involve him in his care. The benefit of participation is that it improves knowledge and understanding of health care activities that help clients to become self-reliant and responsible for their health and that of others. You should

also consider your own capability in accepting responsibility so as to avoid harm to the client that will result in your being liable.

You should maintain a cooperative relationship with co-workers in nursing and other fields and you will achieve this by:

- Understanding and respecting co-workers, treating them with dignity and courtesy and by abiding by rules and regulations.
- Acting responsibly through providing timely, high quality service, working collaboratively and carrying your share of the load of care and meeting performance expectations.
- You should also take appropriate actions to safeguard individuals when their care is endangered by a co-worker or any other person. You should draw the attention of such co-worker to the areas he/she is failing to perform and if he/she does not improve you should take necessary steps to stop him/her.

2.4 Summary

Since right co-exist with obligations and infringement of client‟s rights during the course of your providing care can make you liable it is important that you know what the rights of clients are and your responsibility to ensure that clients‟ rights are respected in caring for them.

In this unit you have learnt that:

- Right is a claim to a particular privilege and legal rights co-exist with obligation.
- Among the objectives of the patients‟ bill of rights is to strengthen consumers‟ confidence by assuring the health care system is fair and responsive to consumers‟ needs.
- There are about eight principal areas of rights and responsibilities in the patients‟ bill of right some of which are: information disclosure, participation in treatment decisions, confidentiality of health information, respect and non discrimination.
- As a nurse, you are privileged to make decision about areas of care and you are expected to be able to justify the basis on which your decisions are made.
- In providing care for clients, you have to take into account the patients‟ bill of right and provide care that respects these rights.

1.5 References/Further Reading/Web Resources

Advisory Commission on Consumer Protection and Quality in Health Care Industry: Patients‟ Rights and Responsibilities.

Jasper, M. (1999). *Challenges to Professional Practice in Foundations of Nursing Practice.* London: Macmillan Press.

Kozier, B. *et al.* (2000). *Fundamentals of Nursing: Concept, Process, and Practice*, (6th ed.). New Jersey: Prentice Hall Health.

UNIT 3 THE LEGAL ROLES OF THE NURSE

Unit Structure

3.1 Introduction

The nurse as an individual is under the law and has the right to be protected by the law. However, we mentioned in an earlier discussion that every right has a responsibility. The nurse therefore also has a responsibility under the law. Her responsibility will depend on the role he/she is playing at the time and basically the nurse has three legal roles: as a citizen, as employee or contractor for service and as a provider of services. This unit examines these legal roles of nurses and their associated rights and responsibilities.

3.2 Learning Outcomes

By the end of this unit, you should be able to:

- explain the rights and responsibilities of the nurse as a citizen
- explain the rights and responsibilities of the nurse as an employee or contractor for services
- discuss the rights and responsibilities of the nurse as a provider of service
- discuss nurses‟ legal role in selected facets of nursing practice
- explain the legal responsibilities of students.

3.3 Main Content

3.3.1 The Rights and Responsibilities of the Nurse in the Role of a Citizen

The rights and responsibilities of the nurse in the role of citizen are the same as those of any individual under the legal system.

The universal declaration of human rights by the United Nations general assembly in 1948 proclaimed that all people have the rights to freedom of opinion and expression. Nurses as individuals share in these common rights. They share with other citizens‟ welfare right, the right to property ownership and other rights applicable to individuals within the society in which she resides. The nurse has a right to respect of her own rights and responsibilities. Nurses, therefore have a right to appeal to conscience, to refuse to act in such a way that impinges upon the freedom of belief and expression. This may include such issues as conscientious objection to abortion and artificial contraception.

As a citizen she has the responsibilities to protect the client's right to good health and therefore should make conscious efforts to protect clients from harm and ensure consideration for their personal property rights, right to privacy, confidentiality and other rights.

3.3.2 The Rights and Responsibilities of the Nurse in the Role of Employee or Contractor for Service

The employer of the nurse may be a client in the case of independent nurse practitioner, a physician, hospital or health care agency. Depending on the one that applies, the nurse may have obligations to the employer, clients and other health care personnel. A nurse who is employed by an agency works as a representative of the agency, and the nurse‟s contract with clients is an implied one. However, a nurse who is employed directly by a client e.g. a private nurse, may have a written contract with that client in which the nurse agrees to provide professional services for a certain fee. The nurse has to fulfill the obligations of such contracted service or must have legitimate reasons for failing to do so, e.g. illness or death. Personal inconveniences and personal problems such as going to bed late the previous night or breakdown of your car are not legitimate reasons for failing to fulfill a contract.

Contractual relationships vary among practice settings. An independent nurse practitioner is a contractor for service whose contractual

relationship with the client is an independent one. The nurse employed by a hospital functions within an employer-employee relationship in which the nurse represents and acts for the hospital and therefore must function within the policies of the employing agency.

This type of legal relationship creates the ancient legal doctrine known as *respondeat superior* (let the master answer). In other words, the master (employer) assumes responsibility for the servant (employee) and can also be held responsible for malpractice by the employee. By virtue of the employee role, therefore, your conduct as a nurse in the hospital is the hospital's responsibility. This doctrine does not imply that you cannot be held liable as an individual nor does it imply that the doctrine will prevail if your actions are extra ordinarily inappropriate, that is beyond those expected or foreseen by the employer. For example, if you slap a client on the face, the employer could disclaim responsibility because this behaviour is beyond the bounds of expected behaviour. Criminal acts, such as assisting with criminal abortions or taking drugs from a patient's supply for personal use, would also be considered extraordinary inappropriate behaviour. Again you can be held liable for failure to act when you are expected to act. For example, if you see another nurse hitting a patient and you fail to do something to protect the patient, you will be seen as being negligent.

In your role as an employee or contractor for service, you have obligations to the employer, the client and other personnel. The nursing care you provide must be within the limitations and terms specified in your contract. You have an obligation to contract only for those responsibilities that you are competent to discharge. You are expected to respect the rights and responsibilities of other health care participants. For example, although you have a responsibility to explain nursing activities to a client, you do not have the right to comment on medical practice in a way that disturbs the client or denounces or runs down the physician. In return for your services, you have a right to adequate working conditions such as safe environment, adequate equipment and facilities, adequate compensation for services rendered, and to a reasonable and prudent conduct by other health caregivers. When any of these rights is infringed upon, you have the right to pursue it through legally approved means such as collective bargaining or instituting a legal action against the employer.

Collective bargaining is the formalized decision making process between representatives of management and that of labour to negotiate wages and conditions of employment, including work hours, working environment and fringe benefits of employment. Through a written agreement, both employer and employee legally commit themselves to observe the terms and conditions of employment. When collective

bargaining breaks down because an agreement cannot be reached, the employees usually call for a strike. A strike is an organised work stoppage by a group of employees to express a grievance, enforce a demand for changes in conditions of employment, or solve a dispute with management. Because nursing practice is a service to people, often, ill people, strike presents a moral dilemma to many nurses. Actions taken by nurses can affect the safety of people. In some places strikes by nurses and other health professionals are prohibited, instead they mandate arbitration which is an agreement negotiated by a designated and impartial person.

Collective bargaining is more than the negotiation of salary terms and hours of work. It is a continuous process in which day-to-day work problems and relationships can be handled in an orderly and democratic manner.

Self-Assessment Exercise

i. What are the three legal roles of the nurse?
ii. Outline the responsibilities and right of the nurse as a contractor for service.

3.3.3 The Rights and Responsibilities of the Nurse in the Role of Service

In your role as a provider of service, your responsibilities are:

- to provide safe and competent care so that your client does not come to any form of harm including physical, psychological, or mental.
- to inform clients of the alternatives and outcomes of nursing care.
- to provide adequate supervision and evaluation of subordinates for whom you are responsible.

This implies that you have an obligation to practice and direct the practice of others under your supervision so that harm or injury to the client is prevented and standards of care are maintained. Even when you carry out treatment orders by the physician, the responsibility for the nursing activities that you carry out is yours. When you are asked to carry out an activity that you believe will be injurious to the client, your responsibility is to refuse to carry out the order and report this to your supervisor.

The standard of care by which you act or fail to act is legally defined by the Nurse Practice Act and by the rule of reasonable and prudent action,

that is what a reasonable and prudent professional with similar preparation and experience would do in similar circumstance. It is important that you are aware that implicit in your role as provider of service are several legal concepts such as standard of care, contractual obligation, and liability. Liability is the quality or state of being legally responsible to account for one‟s obligations and action and make financial restitution for wrongful acts. You must therefore be very careful to carry out your responsibilities as expected so as to avoid or prevent any form of liability. To accomplish your responsibilities, you have the right to reasonable and prudent conduct from the clients, colleagues and subordinates. For example, clients should provide accurate information as required. You also have a right to adequate and qualified assistance as desired.

The legal rules of the nurse and their associated rights and responsibilities are summarised below in table 1.

Table 1: Legal Roles, Right and Responsibilities

ROLE	RESPONSIBILITIES	RIGHTS
Provider of service	To provide safe and competent care commensurate with the nurse‟s preparation, experiences and circumstance. To inform clients of the consequences of various alternatives and outcomes of care. To provide adequate supervision and evaluation of others for whom the nurse is responsible To remain competent To fulfil the obligations of contracted service with the employer	Right to adequate and qualified assistance as necessary. Right to reasonable and prudent conduct from clients e.g. provision of accurate information as required.
Employee or contractor of service	To respect the employer To respect the rights and responsibilities of other health care providers To protect the rights of the recipients of care	Right to adequate working condition e.g. safe equipment and facilities Right to compensation for services rendered Right to reasonable and prudent conduct by other health care providers.
Citizen		Right to respect by others of the nurses own rights and responsibilities Right to physical safety

Source: Kozier, B. *et al.* (2000)

3.3.4 Nurses legal Role in Selected Facets of Nursing Practice

1. Privileged Communication

Privileged communication is information given to a professional person who is forbidden by law from disclosing the information without the consent of the person who provided it. Liability can result if you breach confidentiality by passing on confidential client information to others. There is however a delicate balance between the need of a number of people to contribute to the diagnosis and treatment of a client and the client's right to confidentiality. In most situations, necessary discussion about a client's medical condition is considered appropriate, but unnecessary discussion and gossips are considered a breach of confidentiality. Necessary discussion should involve only those engaged in the client's care.

2. Informed Consent

Informed consent is an agreement by a client to accept a course of treatment or a procedure after complete information including the benefits, risks and other facts relating to it. Obtaining informed consent for medical procedures is a legal responsibility of the doctor and your responsibility as a nurse is to witness the giving of the informed consent, which involve:

- witnessing the exchange between the client and the physician.
- establishing that the client really did understand the medical procedure to be carried on him/her.
- witness the client‟s signature.

Obtaining informed consent for nursing procedure however is the responsibility of the nurse. You should therefore provide the necessary information and ensure that the client understands before giving his consent.

3. Record Keeping

All records of client care are legal documents and can be produced in court as evidence. It is important therefore that you keep accurate and complete record of nursing care you provided to the clients. Insufficient or inaccurate assessment and documentation can hinder proper diagnosis and treatment and may cause the client some injury and expose you to liability.

4. Controlled Substances

Controlled substances such as Indian hemp, cannabis, cocaine and heroin are not used in the day-to-day performance of nursing duties, but there are others such as narcotic, depressants, stimulants and hallucinogens which nurses handle in practice. You must administer these according to the guidelines of the controlled drugs act; misuse or abuse of controlled drugs leads to criminal penalties.

5. Incident Report

Incident report is an agency record of an accident or incident that occurred in the agency, for example, when an in-patient falls from the bed. The purpose of this report is to make available to the agency all the facts about an incident to contribute to statistical data about accident or incident so that necessary steps can be taken to prevent future occurrence of the accident or incident. Information included in an accident report includes:

- Identity of Client by name, hospital number.
- Date, time and place of incidence.
- Description of the facts of the incidence and not your opinion about it.
- Identity of all the witnesses to the incidence.
- Documentation of any equipment by type and number, and any medication by name and number.
- Circumstances surrounding the incident.

6. Wills

A will is a declaration by a person about how his/her property is to be disposed off after death. In order for will to be valid, the following conditions must be met.

- The person making the will must be of sound mind, that is, able to understand and retain mentally, the general nature and extent of the person's property, the relationship of the beneficiaries and of relatives to whom none of the estate will be left, and the disposition being made of the property.

- The person must not be unduly influenced by anyone else. Clients in developing countries, such as Nigeria, do not often request to make their will and require nurses to be witnesses. However, such a request cannot be seen as impossibility. If such a situation arises, it is important that you find out the institution‟s policy with regard to preparation and witnessing of such will. Even

where an agency permits nurses to witness wills, you have a right to refuse to act in that capacity if in your opinion, undue influence has been brought on the client.

7. **Abortions**: Abortion is induced termination of pregnancy before the foetus reaches the stage of viability. In many countries in African, abortion is still illegal. However, abortion is permissible for a registered medical doctor when conducted for medical indications. Any attempt to procure abortion in Nigeria is a crime unless it is performed to save the woman's life. In Europe and America, abortion is legally permissible on request by a pregnant woman within the early stage of pregnancy. This may present a legal or an ethical conflict to some nurses. However, many statutes also include conscience clauses upheld by the Supreme Court in the USA designed to protect nurses and hospitals that refuse to participate in abortion.

8. **Living Will and Euthanasia:** Living will is a signed request to be allowed to die when life can only be supported mechanically or by heroic measures. In Nigeria, we are familiar with verbal living will of clients. Significant others have stated their loved ones request, to allow them die peacefully at home, or for the dead body to be treated in a particular way. The purpose often is to avoid being dehumanized in the hospital or to save cost for the loved one. Although it is unwritten and not legally binding, many times, the relations feel morally obliged to honour such wills. The use of mechanical or heroic measures to support life does not apply in these cases because it is non – existent in Nigeria.

   If you find yourself in a place where living will statutes exist, you should be familiar with the relevant policy and procedures and the immunity granted to those who grant living wills request.

9. **Death and Related Issues:** Legal issues surrounding death that are of importance to the nurse include death certificate, labeling of the corpse, autopsy, organ donation and inquest. The attending physician usually issues death certificate but it is the nurses who keep custody of the pro-forma and give them to the doctor on request. You should be conversant with your employing agency policy on who keeps the certificate after completion and the process of collecting them so that you can inform and guide the deceased's next of kin appropriately. You also have the duty to handle the deceased with dignity and label the corpse appropriately before they are sent to the mortuary so as to avoid misplaced identity especially at the accident and emergency units.

Autopsy or postmortem examination is performed in cases stipulated in law such as when death is sudden or a suspected murder. It is the responsibility of the physician to order and obtain consent for the autopsy.

An inquest is a legal inquiry into the cause of death which is required in some deaths suspected to be murder cases. The inquest is conducted under the jurisdiction of a coroner or appointed medical examiner. Your institutional policy will dictate to you your role in such situations. It is important that you know that potential evidence in criminal cases such as bullets, specimens etc. need to be obtained in a proper manner and protected from potential alteration or loss, so that important evidence is not excluded at trial.

The law in some developed countries, such as UK, USA and Canada allows persons 18 years or above and of a sound mind to make a gift of all or part of their body at death to treat other people or teach students or for research. The person is usually compelled to sign a will or form in the presence of two witnesses. The person, who offers to make such a donation, should inform his/her relatives so that they know what to do when it is time for the organ (s) to be collected. You may be requested to serve as a witness for person who offers to donate organs.

3.3.4 Legal Responsibilities of Students

Students of nursing programmes and other clinical science programmes are usually posted to areas of clinical experience to practice, using real life persons, what they have been taught. The law does not define the permissible limits of a student nurses' function. While in training, students are not registered or licensed professionals, and if they perform any function legally reserved for licensed professional, for example giving injection, then the student is legally expected to perform at the same standard of skill and competence as a professional. The student is responsible for her action and liable for acts of negligence committed during the course of her clinical experiences.

In legal suits and claims of damages arising from negligent acts by nursing students, the student, traditionally, are regarded as employees of the hospital or health care institutions where they are receiving the clinical experience. Hence the hospital is liable under the "doctrine of *respondeat superior*." The professional nurse who assigned the duty to the student will be joined in the suit for negligence of duty, while the student might be co-joined for accepting to perform the activity. In areas where students are not employees of the hospital, but of another institution, such as college or university and only using the hospital on contract to gain clinical experience, both hospital and educational

institution might be held liable. To avoid litigation, students on clinical experience should:

- Be assigned activities within their capabilities and given reasonable guidance and supervision by a registered/licensed professional nurse. The professional may be the clinical staff or instructor of the student.
- Remember to ask for help or supervision in any situation they feel inadequately prepared to act.
- Comply with the policies of the agency in which they are gaining clinical experience as regard standards of care, methods of recording and reporting of observation and care.
- Comply with the policies and stipulation of responsibilities provided by the training school.

3.4 Summary

If you must avoid litigation, you need to know your legal roles. This will help you to live up to your responsibilities in whatever situation you find yourself and ensure that your actions are within institutional policy and the law.

In this unit, you have learnt that:

- You have, basically, three legal roles which include; as a citizen, as employee or contractor for service and as a provider of services.
- Your responsibilities will depend on the roles you are playing at the time.
- Your right and responsibilities in the role of a citizen are the same as those of any individual under the legal system.
- As an employee or contractor for service, you must fulfill obligation for the contracted service or must have legitimate reasons for failing to fulfill the obligations.
- In your role as provider of service you have an obligation to practice and direct the practice of others under your supervision so that standards of care are maintained and the client is protected from injury.
- There are legal implications attached to the following: privileged communication, informed consent, record keeping, controlled substance, incident report, wills, abortions, living wills, death and related issues.

- Students are legally expected to perform at the same standard of skill and competence as a professional, if they perform any function legally reserved for licensed professionals.

3.5 References/Further Reading/Web Resources

Anarado, A. N. (2002). *Ethics and Law in Nursing Practices*. Enugu: Snaap Press.

Kozier, B. *et al*. (2000). *Fundamentals of Nursing: Concepts, Process and Practice*, (6th ed.). New Jersey: Prentice Hall Health.

UNIT 4 OBTAINING INFORMED CONSENT

Unit Structure

4.1 Introduction

In the past, nurses and doctors told the client what care he was going to receive and the client agreed to it. Recently there has been a shift in the balance of power between the caregiver and the care receiver. Clients are seeking more self-determination and control over their bodies when ill. Current policy documents emphasize the importance of including clients in planning their care thus making obtaining informed consent a fundamental part of the care giving process. This unit will examine the concept of consent, the responsibilities of the nurse in obtaining consent, stages in obtaining informed consent, problems that may be encountered in obtaining consent and how the problems can be effectively dealt with.

4.2 Learning Outcomes

By the end of this unit, you should be able to:

- explain the concept of consent
- outline the responsibilities of the nurse in obtaining consent
- describe the process of obtaining consent
- outline the problems encountered in obtaining consent
- explain how the problems can be effectively dealt with.

4.3 Main Content

4.3.1 Concept of Consent

The word consent, in the medico-legal context, is giving permission to a health care provider to enable the practitioner to treat or care for the client.

When an individual feels she has a health problem and seeks your advice and help, it does not in any way indicate that she has implicitly consented to treatment, or that she has relinquished her rights as a person. Therefore, throughout her stay in the hospital or under your care, you should inform her of what is to happen and you must obtain her consent. Informed consent is an agreement by a client to accept a course of treatment or a procedure after complete information, (including the risk of the treatment and facts relating to it) has been provided by a health care provider. Usually the client signs a form provided by the agency. The form is a record of the informed consent and not the informed consent itself. That is, the consent is the permission granted while the form is the record of the permission that was granted.

Consent can be said to be expressed or implied. Expressed consent may be either oral or written agreement. It can be formal or informal. Formal consent is a written consent and is usually obtained in procedures which carry with them a reasonable hazard, e.g. surgery, administration of anesthesia, clinical trial, etc. Informed consent includes verbal expression of consent and behavioural expressions. For example, a client who expresses the desire and accepts your offer to attend to his hygienic needs has given a verbal consent. A client who turns his back and exposes his buttocks to you on your informing him you want to give him an injection, has expressed his consent behaviorally.

Implied concept exists when the individual‟s non-verbal behaviour indicates agreement. Example of situations in which consent is implied includes:

- During an emergency when the individuals cannot provide consent. Here the emergency and the expressed desire for your assistance will make you believe that consent has been given for whatever assistance or care you render.
- During surgery when additional procedures are needed that consistent with the procedure already consented to. In this situation, it will be unreasonable to conclude the surgery and wait until the client is informed of the additional procedure and obtain

his consent before carrying out the procedure. It will imply subjecting the client to another surgery.

- When persons continue to participate in therapy without removing previous consent.

Legally, consent can be described as being voluntary, involuntary or implied. Voluntary consent is informed agreement between the client and the practitioner about the scope and course of the client‟s treatment. In this type of consent, the client does not feel coerced. Sometimes, fear of disapproval by a health professional can be the motivation for giving consent. Such consent is not voluntary.

Involuntary consent is consent that is obtained regardless of the client‟s wishes. Here the consent is supplied by the process of law. An example of this type of consent is treatment that is ordered by a court because the client is mentally ill, under arrest or unable to consent for some other exceptions.

Implied consent is said to exist when the client is unconscious or unable to communicate and or is suffering from a life-threatening disease or illness.

4.3.2 Exception in Obtaining Consent

Three groups of clients cannot provide consent. They include:

- Minors – These are people who are below the age of 18 years. For this group, a parent or guardian must give consent before they can obtain treatment. The same is true of an adult who has the mental capacity of a child and who has an appointed guardian. However, minors who are married, pregnant, parents, members of the military are in some places, often legally permitted to provide their own consent.

- Unconscious persons or persons who are injured in such a way that are unable to give consent. In these situations, consent is usually obtained from the closest adult relation. In a life threatening emergence, if consent cannot be obtained from the client or relation, the law generally agrees that consent is implied.

- Mentally ill persons who have been judged by professionals to be incompetent. The mental health act or similar statutes generally provide definitions of mental illness and specifies the rights of the mentally ill under the law as well as the rights of the staff caring for such clients.

The three major elements of informed consent are:

- The consent must be given voluntarily or freely.
- The consent must be given by an individual with the capacity and competence to understand.
- The client must be given enough information to be the ultimate decision-maker.

Self-Assessment Exercise 1

i. Define informed consent.
ii. Explain the following:

   a. Voluntary consent
   b. Involuntary consent
   c. Implied consent

iii. Give examples of situations in which consent is implied.

4.3.3 Nurses Responsibilities in Obtaining Consent

Obtaining informed consent for specific medical and surgical treatment is the responsibility of a physician. This responsibility is delegated to nurses in some agencies and no law prohibits the nurse from being part of the information–giving process. The practice however is highly undesirable. This is so because it is not right for you to obtain consent for a procedure that you are not in control of. The person who is going to carry out the procedure and who knows what is involved in the procedure is in the position to obtain the consent as he is expected to explain to the client what is intended before asking for consent to carry it out. Since you are neither the one that will perform the surgery, nor are you the one to administer the anesthesia, you might not be in a good position to explain to the client what is involved and therefore should not be the one to obtain the consent. Often, your responsibility is to witness the giving of the informed consent for medical procedures. This involves the following:

- witnessing the exchange between the client and the physician.
- establishing that the client really did understand, that is, was really informed.
- that the client freely or voluntarily gives his/her consent.
- witness the client‟s signature or thumb printing.

If you witness only the client's signature and not the exchange between the client and the physician, you should write "witnessed signature

only"" on the form. If you find that the client really does not understand the physician's explanation, then the physician must be notified.

Obtaining informed consent for nursing procedures is the responsibility of the nurse. This applies in particular to nurse anaesthetists, nurse midwives, and nurse practitioners performing procedures in their advanced practices. However, it applies to other nurses, including you, who perform direct care such as insertion of nasogastric tubes or administration of medication.

4.3.4 Ongoing Consent to Care

Most often, consent is directed mainly at specific episodes of care, for example, procedures and surgery. It is not therefore, specific enough or appropriate for those receiving long-term care, for whom the issue is ongoing consent to care and treatment, not specific episode. For such clients, active participation in the planning and reviewing of their care is required to ensure ongoing consent to care.

3.4.1 Stages of ongoing Consent to Care

The process of ongoing consent to care is examined in five stages from the perspectives of the service user (fig. 1).

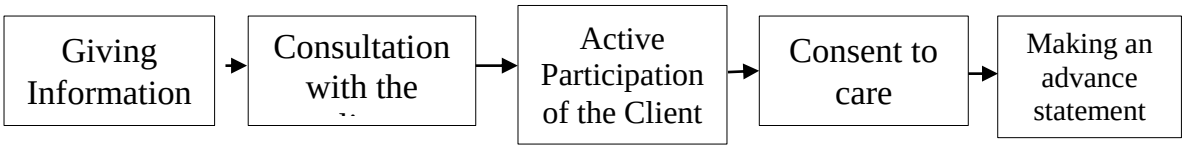

Fig. 1*:* Tasks in Obtaining Ongoing Consent to Care for *the client*

Stage 1: Giving Information – every client must have a care plan in which his or her assessed care needs and the care to be given are recorded. For mentally competent people, the first stage should be for you to inform them that they have a plan. Offer those who can read the opportunity to read the plan and for those who cannot read, explain the content of the plan. This is necessary so that they can actively participate in the review of the plan when the need arises. If they don"t know about the plan, it will be difficult for them to participate actively in its review. However, access to client"s health records can be refused where the access would likely cause serious harm.

General Guide to the amount and type of information required for client to make informed consent

The client should know the following:

- The purpose of the treatment
- The intended benefits of the treatment.
- Possible risks or negative outcomes of the treatment.
- Advantages and disadvantages of possible alternatives to the treatment including no treatment.

Stage 2: Consultation with the client – Consultation with the client implies that you take into account issues such as clients‟ beliefs, values, preferences and perceived quality of life when making a decision on their behalf. You will have information on these only if you consult with or involve the client. If there is no evidence of consultation with the client then you are delivering care and treatment with their "compliance" rather than their expressed consent. You are therefore cautioned not to confuse compliance with consent. For consent to be valid, the client should be given adequate information and have the mental capacity to be able to understand and process the information. If the first two parts of this process, that is, information giving and involvement of the client, have not been complied with, then a valid consent cannot be given.

Stage 3: Active Participation of the Client – You should encourage the clients to be actively involved in planning and reviewing their care as recorded in their care plan. Active participation of the client can have potential benefits which include:

- The client‟s care plan is likely to be more individualized if the client had helped to compile it.
- Clients are assisted to become more independent and thus minimize hospitalization.
- The care plan is likely to be a more valid and workable tool from the client perspective and thus increase the client‟s co-operation with the strategies prescribed.

Stage 4: Consent to care – Here the client agrees to the care. For any person to be able to give a meaningful consent to his or her care, the previous three stages must be followed. Without adequate information, the ability to process the information and the opportunity to ask questions, the client cannot give a valid consent.

Stage 5: Making an advance statement and/or directive. The logical and progressive stage after giving consent to the care that was suggested

would be for the client to specify the care strategies he wants or does not want in any given situation. Clients who have made an advance statement and/or directive should be able to feel confident that their wishes will be complied with even if they are not able to give their instructions personally. This can be seen as the ultimate in client participation, empowerment and taking control.
An advance statement is a statement of views or wishes to be taken into account in decision making and is not intended to be binding on the health care team.

An advance directive or living will is intended to be binding on the health team. For example, an advance directive is not to institute artificial feeding for people at the end stage of dementia.

Although some people might see the use of a feeding tube as just a different method of delivering food and fluids, and therefore to be maintained at all cost rather than allow the client to starve to death, others might view it as an invasive procedure or as a technological support. Some people may consider this method of feeding as too invasive, but unless an advance directive specifically refusing this technology has been made, it may be used if seen by you to be appropriate in the client‟s best interest.

4.3.5 Problems in Obtaining Consent

Sometimes you may encounter a client or members of a client‟s family whom for various reasons resist or oppose treatment. Such reasons may be religious, socio-cultural, economic or politically based. Examples of such problems include:

- The patient who needs but refuses treatment.
- The parent who refuses permission to treat a child with life threatening illness.
- The mentally ill person.
- The intoxicated or belligerent clients.
- Client who gives and then withdraws consent for treatment, etc.

These situations create conflicts of values, rights and responsibilities. For instance, the right to life and the duty to preserve life versus the right to die and the duty to alleviate pain and suffering. The risk of legal and ethical liability for failing to act appropriately in such cases cannot be overstated.

4.3.6 Strategies to Resolve Problems in Obtaining Consent

In order to deal effectively with the problems from the client or the family in obtaining consent, the nurse must integrate fundamental principles of behaviour assessment and modification into the treatment process. The steps are as follows:

- Assess the client to identify and deal effectively with any psychosocial or physical difficulties that could be militating against obtaining consent.
- Institute every effort reasonable and lawful to convince the client to urge him to accept the required treatment.
- If a conscious and rational adult client or parent refuses to give consent, he cannot be treated without risk of civil and criminal liability. In such a situation, the refusal should be carefully documented and witnessed. An example of this is “discharge against medical advice”.
- Obtain legal consultation if the client‟s condition is sufficiently grave.

4.4 Summary

Obtaining informed consent is a fundamental part of your care giving process and failure to obtain consent to care can expose you to the risk of legal and ethical liability. It is important that you know and understand your responsibilities in obtaining consent to care.

In this unit, we have learnt that:

- Informed consent is an agreement by a client to accept a course of treatment or a procedure after complete information has been provided by a health care provider.
- It is your responsibility to obtain consent to perform nursing procedures, while for medical procedures, your responsibilities are to; witness the exchange between the client and the physician, establish that the client actually understood the information the physician gave and witness the clients signature.
- The process of ongoing consent to care is in five stages as follows; giving information, consulting with client, encouraging active participation of client, and giving consent to care and advanced statements and/or directives from the client.
- Problems in obtaining consent include; client refusing treatment, parents refusing permission to treat a child with life threatening

illness, dealing with mentally ill or intoxicated persons and client who gives and then withdraws consent.

- Strategies to resolve problems encountered in obtaining consent include; assessing the psycho-social difficulties that could be militating against obtaining consent, using every reasonable and lawful effort to convince the client and obtaining legal consultation among others.

1.5 References/Further Reading/Web Resources

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MODULE 3 CITIZENS' RIGHT TO HEALTH AND ETHICS AND MORALITY APPLIED TO NURSING PRACTICE

Unit 1 Health as a citizens/patient's inalienable rights (whether health care delivery is a right?)
Unit 2 The nature of moral problem
Unit 3 Theories of ethics and the ethics of doctor/nurse and patient relationship
Unit 4 Truth telling and white lie

UNIT 1 HEALTH AS A CITIZENS/PATIENT'S INALIENABLE RIGHTS (WHETHER HEALTH CARE DELIVERY IS A RIGHT?)

Unit Structure

1.1 Introduction

"Health is wealth" is a popular mantra that shows the high premium man pay to health. Every human seems to believe that good health is the basis for a long life and hope of attainable and sustainable prosperity. If good health is essential to long life and prosperity, them it stands to reason that health should be a fundamental part of our human rights. After all, there cannot be "right to life", and respect for "the right to the dignity of the human person" without securing his right to good health. It is therefore important to give prime place to the health of the human being, since it is personal prosperity that guarantees national prosperity.
In the 1999 Constitution of the Federal Republic of Nigeria as amended in 2011, there are various sections attending to the health needs of patients such as Section 17 (3) (c) which states "the health, safety and

welfare of all persons in employment are safeguarded and not endangered or abused"; Section 17 (3) (d) which states "there are adequate medical and health facilities for all persons" and Section 33 (1) which states "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

The Article 16 of the African Charter on Human and Peoples' Right (Ratification and Enforcement Act), LFN 1990 states that "Every individual shall have the right to enjoy the best attainable state of physical and mental health; States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick"
In the 1946 Constitution of the ***World Health Organization (WHO),*** health is defined as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity", the subvention of the various levels of government to health questions the importance attached by the government to health and the citizens' 'Right to Health'. There are therefore pertinent and burning questions: is access to good health a basic right of the Nigerian citizen? How may good health services be accessed in order to remain healthy?

If this is not available, how may the average citizen seek redress?

1.2 Learning Outcomes

By the end of this unit, you will be able to:

- Describe the concept of health right.
- Explain the relation between health right and other rights
- Describe the statutes relevant to health rights

1.3 Concept of Health

Definition: What is Health?
The ***World Health Organization (WHO)*** defines health broadly as
A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

The Black's Law Dictionary (10th edition) *defines* health as:
The quality state or condition of being sound or whole in the body, mind and soul especially freedom from pain or sickness. In addition, it states

that health is the relative quality, state or condition of one's physical well-being, whether good or bad.
The WHO definition is very broad and ambiguous. In 1986, the WHO further clarified its position stating that health is:
A resource for everyday life, not the objective of living. Health is a positive concept of emphasizing social and personal resources, as well as physical capacities

3.1.1 Health as a Human Right

The right to health has been outlined in various international legal instruments including the Universal Declaration of Human Rights, The International Covenant of Economic, Social and Cultural Rights and the Convention on the Human Rights of Persons with Disabilities. There has been a lingering debate on the actual route to interpreting and applying the 'right to health' as a result of the lapse in the definition of health', the minimum entitlements of a person which could be deemed as a part of right to health, what institutions are responsible for ensuring a right to health and what degree should the political institutions invest financial and material resources to ensure the protection of this right and particularly the varying level of economic/financial power possessed by nations of the world to ensure the recognition and possible inclusion/implementation of the requirements of attaining an appreciable standard in the 'right to health'.

3.1.2 International Law and the Right to Health

The international human rights law favours attaining the highest standard possible. The ***International Covenant of Economic, Social and Cultural Rights,*** widely considered to be the most important instrument for the protection of many rights (including the right to health), recognizes "*the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*".

The Universal Declaration of Human Rights (Universal Declaration) 1948 in article 25 provides that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. In addition, it states that *"Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection".*

Self-Assessment Exercises 2

a. What is health?
b. What statutes and laws affirms citizens' right to health?

The ***International Covenant of Economic and Social Rights (ICESR) 1966 Article 12*** states that:

1. The States, Parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   (a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child;
   (b) The improvement of all aspects of environmental and industrial hygiene;
   (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
   (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Self-Assessment Exercise (SAE) 2

States the International Covenant of Economic and Social Rights (ICESR) 1966 Article 12

3.1.4 Nigerian Law and the Right to Health for Nigerian Citizens

The domestication of the African Charter in Nigeria entitles Nigerian citizens to good health which is also enforceable in Nigerian courts. The **1999 Nigerian Constitution** (as amended) in section 12 provides that international treaties have the force of law by the National Assembly. Case law involving detained people and prisoners have showed this and the legal principles have prevailed, supporting their inalienable rights to accessing health care. In ***Odafe & Ors v. A. G. Fed. & Ors,*** a Federal High Court sitting in Port-Harcourt partially justified the African Charter, affirming that the applicants who were prisoners had the right to the best attainable standard of physical and mental health. His Lordship ***Nwodo,*** *J.* held that: "The government of this country has incorporated the African Charter on Human and Peoples' Rights Act Law Cap 10 as part of the law of this country".

Also, the Court of Appeal in ***Ubani v. Director, SSS*** held that:
…..the African Charter is applicable in this country. The Charter entrenched the socio-economic rights of person. The Court is enjoined to ensure the observation of these. A dispute concerning socio economic rights' such as the right to medical attention requires the Court to evaluate State Policies and give judgement consistent with the Constitution.

I therefore appreciate the fact that the economic cost of embarking on medical provision is quite high. However, the statutes have to be complied with and the state has a responsibility to all the inmates in prison, regardless of the offence involved, as in the instant case where the state has wronged the applicants by not arraigning them for trial before a competent court within a reasonable time and they have been in custody for not less than two years suffering from an illness. They cannot help themselves even if they wanted to because they are detained and cannot consult their doctor.

The citizen's right to health is non-negotiable by virtue of the extant laws. Failure to recognise the right to health, failure to make provisions for such or its denial for different categories of patients including prisoners could make many people vulnerable and lead to epidemics, irredeemable complications, premature deaths and social issues of orphans.

1.4 Summary

Right to health is central to human existence and is core to benefiting from what other rights afford. Various laws and statutes have been dedicated to make the Nigerian Government at all levels to give her citizens the desired care. Case law in this regard have affirmed this position as sacrosanct.

The right of every individual to good health care is uncompromisable and should not be predicated on age, social status, gender, religion etc. It is core to human existence, dignity of life/fulfilment, productivity and related to other rights.

1.5 References/Further Readings/Web Resources

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1.6 Possible Answers to SAE

Answers to SAEs 1
Self-Assessment Exercises 2

a. What is health?
The ***World Health Organization (WHO)*** defines health broadly as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

OR

The Black's Law Dictionary (10th edition) *defines* health as the quality state or condition of being sound or whole in the body, mind and soul especially freedom from pain or sickness. In addition, it states that health is the relative quality, state or condition of one's physical well-being, whether good or bad.

b. What statutes and laws affirms citizens' right to health?

Answers to SAEs 2

The ***International Covenant of Economic and Social Rights (ICESR) 1966 Article 12*** states that:

1. The States, Parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child;
(b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

UNIT 2 THE NATURE OF THE MORAL PROBLEM

Unit Structure

2.1 Introduction

In the process of providing quality nursing care, nurses encounter challenges where morality is questioned in the face of professional ethical values and standards and get in the dilemma as to what to do to avoid breaching extant laws and avoiding litigations. Many things about nurses, patients and relations determine what is accepted as morally acceptable. These include upbringing, social beliefs, traditions/culture, religion within the context of the practice environment. The various factors consciously and unconsciously modify and regulate our orientations, morals, beliefs, decisions taken on patients which will suggest the nurse's concern, empathy about the patient.

2.2 Learning Outcomes

By the end of this unit, you should be able to:

- Define morality
- distinguish between the types of morality
- describe how morality is developed
- describe and differentiate between the various forms of morality
- relate between the various forms of morality

2.3 Main Content

2.3.1 The Nature of Morality

Morality often questions our choices and dictates the pace and directions of our lives. Morality asserts itself more strongly on us more than the requirements of the law. Morality overrides personal desires and selfishness and ulterior motives. Morality sets standards whether written or not and highlights our basic duties and obligations as humans. The outcomes of humans is a culminations of certain things, some society driven expectations that we *must* do and certain things we *must not* do. Thus, it goes without saying that morality is fundamental to ethical principles and its outcomes. Morality helps us to clearly defined standards of adjudging certain behaviours, actions and attitudes as good or wrong with clearly set guidelines for consequences. Fundamental to deriving pleasure as humans is the choices we make, therefore ethics helps us to use our perceived liberty responsibly without abusing other person's privileges and rights. Ethics readily comes to our aid when we are faced with the challenges we pass through when our choices as professionals with values conflict individual patient management.

2.3.2 Definition of Key Terms

Ethical, Moral, Unethical, Immoral
In ordinary language, we frequently use the words *ethical* and *moral* (and *unethical* and *immoral*) interchangeably; that is, we speak of the ethical or moral person or act. On the other hand, we speak of codes of ethics, but only infrequently do we mention codes of morality. Some reserve the terms *moral* and *immoral* only for the realm of sexuality and use the words *ethical* and *unethical* when discussing how the business and professional communities should behave toward their members or toward the public. More commonly, however, we use none of these words as often as we use the terms *good*, *bad*, *right*, and *wrong*. What do all of these words mean, and what are the relationships among them? *Ethics* comes from the Greek *ethos*, meaning character. *Morality* comes from the Latin *moralis*, meaning customs or manners. Ethics, then, seems to pertain to the individual character of a person or persons, whereas morality seems to point to the relationships between human beings. Nevertheless, in ordinary language, whether we call a person ethical or moral, or an act unethical or immoral, doesn't really make any significant difference.

In philosophy, however, the term *ethics* is also used to refer to a specific area of study: the area of morality, which concentrates on human

conduct and human values. When we speak of people as being moral or ethical, we usually mean that they are good people, and when we speak of them as being immoral or unethical, we mean that they are bad people. When we refer to certain human actions as being moral, ethical, immoral, and unethical, we mean that they are right or wrong. The simplicity of these definitions, however, ends here, for how do we define a right or wrong action or a good or bad person? What are the human standards by which such decisions can be made? These are the more difficult questions that make up the greater part of the study of morality, and they will be discussed in more detail in later chapters. The important thing to remember here is that *moral*, *ethical*, *immoral*, and *unethical* essentially mean *good*, *right*, *bad*, and *wrong*, often depending upon whether one is referring to people themselves or to their actions.

Morality and its Applications

What Is Morality?

So far, we have discussed terminology and approaches to studying morality, but we have yet to discover exactly what morality *is*. A full definition of morality, as with other complex issues, will reveal itself gradually as we proceed through this book. In this chapter, however, the goal is twofold: to make some important distinctions and to arrive at a basic working definition of morality.

Ethics and Aesthetics

There are two areas of study in philosophy that deal with values and value judgments in human affairs. The first is ethics, or the study of morality- what is good, bad, right, or wrong in a *moral* sense. The second is aesthetics, or the study of values in art or beauty - what is good, bad, right, or wrong in art and what constitutes the beautiful and the nonbeautiful in our lives. There can, of course, be some overlap between the two areas. For example, one can judge Pablo Picasso's painting *Guernica* from an artistic point of view, deciding whether it is beautiful or ugly, whether it constitutes good or bad art in terms of artistic technique. One can also discuss its moral import:

In it Picasso makes moral comments on the cruelty and immorality of war and the inhumanity of people toward one another. Essentially, however, when we say that a person is attractive or homely, and when we say that a sunset is beautiful or a dog is ugly or a painting is great or its style is mediocre, we are speaking in terms of aesthetic rather than moral or ethical values.

Good, bad, right, and wrong used in a nonmoral sense.

The same words we use in a moral sense are also often used in a nonmoral sense. The aesthetic use described previously is one of them. And when, for example, we say that a dog or a knife is good, or that a

car runs badly, we are often using these value terms (*good*, *bad*, etc.) in neither an aesthetic nor a moral sense. In calling a dog good, we do not mean that the dog is morally good or even beautiful; we probably mean that it does not bite or that it barks only when strangers threaten us or that it performs well as a hunting dog. When we say that a car runs badly or that a knife is good, we mean that there is something mechanically (but not morally or aesthetically) wrong with the car's engine or that the knife is sharp and cuts well. In short, what we usually mean by such a statement is that the thing in question is good because it can be used to fulfil some kind of function; that is, it is in "good" working order or has been well trained. It is interesting to note that Aristotle (384–322) argued that being moral has to do with the function of a human being and that in developing his argument he moved from the nonmoral to the moral uses of good and bad. He suggested that anything that is good or bad is so because it functions well or poorly. He then went on to say that if we could discover what the function of a human being is, then we would know how the term *good* or *bad* can be applied to human life. Having arrived at the theory that the proper function of human being is to reason, he concluded that being moral essentially means "reasoning well for a complete life."

Over the years, many questions have been raised concerning this theory. Some doubt whether Aristotle truly managed to pinpoint the function of humans—for example, some religions hold that a human's primary function is to serve God. Others ask whether being moral can be directly tied only to functioning. But the point of this discussion is that the same terms that are used in moral discourse are often also used non-morally, and neither Aristotle nor anyone else really meant to say that these terms, when applied to such things as knives, dogs, or cars, have anything directly to do with the moral or the ethical.

Morals and Manners, or Etiquette

Manners, or etiquette, is another area of human behaviour closely allied with ethics and morals, but careful distinctions must be made between the two spheres. There is no doubt that morals and ethics have a great deal to do with certain types of human behaviour. Not all human behaviour can be classified as moral, however; some of it is nonmoral and some of it is social, having to do with *manners*, or etiquette, which is essentially a matter of taste rather than of right or wrong. Often, of course, these distinctions blur or overlap, but it is important to distinguish as clearly as we can between nonmoral and moral behaviour and that which has to do with manners alone. Let us take an example from everyday life: an employer giving a secretary a routine business letter to type. Both the act of giving the letter to the secretary and the secretary's act in typing it involve nonmoral behaviour. Let us now suppose that the employer uses four-letter words in talking to the

secretary and is loud and rude in front of all of the employees in the office. What the employer has done, essentially, is to exhibit poor *manners;* he or she has not really done anything immoral. Swearing and rudeness may be deemed wrong conduct by many, but basically, they are an offense to taste rather than a departure from morality.

Let us now suppose, however, that the contents of the letter would ruin an innocent person's reputation or result in someone's death or loss of livelihood. The behaviour now falls into the sphere of morality, and questions must be raised about the morality of the employer's behaviour. Also, a moral problem arises for the secretary concerning whether he or she should type the letter. Further, if the employer uses four-letter words to intimidate or sexually harass the secretary, then he or she is being immoral by threatening the employee's sense of personal safety, privacy, integrity, and professional pride. Non-moral behaviour constitutes a great deal of the behaviour we see and perform every day of our lives. We must, however, always be aware that our non-moral behaviour can have moral implications. For example, typing a letter is, in itself, non-moral, but if typing and mailing it will result in someone's death, then morality most certainly enters the picture.

In the realm of manners, behaviour such as swearing, eating with one's hands, and dressing sloppily may be acceptable in some situations but be considered bad manners in others. Such behaviour seldom would be considered immoral, however. I do not mean to imply that there is *no* connection between manners and morals, only that there is no *necessary* connection between them. Generally speaking, in our society we feel that good manners go along with good morals, and we assume that if people are taught to behave correctly in social situations, they will also behave correctly in moral situations.

It is often difficult, however, to draw a direct connection between behaving in a socially acceptable manner and being moral. Many decadent members of societies past and present have acted with impeccable manners and yet have been highly immoral in their treatment of other people. It is, of course, generally desirable for human beings to behave with good manners toward one another and *also* to be moral in their human relationships. But in order to act morally or to bring to light a moral problem, it may at times be necessary to violate the "manners" of a particular society. For example, several years ago, in many elements of our society, it was considered bad manners (and was, in some areas, illegal) for people of colour to eat in the same area of a restaurant as white people. In the many "sit-ins" held in these establishments, manners were violated in order to point out and try to solve the moral problems associated with inequality of treatment and denial of dignity to human beings. Therefore, although there may at

times be a connection between manners and morals, one must take care to distinguish between the two when there is no clear connection. One must not, for example, equate the use of four-letter words in mixed company with rape or murder or dishonesty in business.

To Whom or What Does Morality Apply?
In discussing the application of morality, four aspects may be considered: religious morality,
morality and nature, individual morality, and social morality.

Religious Morality
Religious morality refers to a human being in relationship to a supernatural being or beings. In the Jewish and Christian traditions, for example, the first three of the Ten Commandments pertain to this kind of morality. These commandments deal with a person's relationship with God, not with any other human beings.

By violating any of these three commandments, a person could, according to this particular code of ethics, act immorally toward God without acting immorally toward anyone else.

Morality and Nature
"Morality and nature" refers to a human being in relationship to nature. Natural morality has been prevalent in all primitive cultures, such as that of the Native American, and in cultures of the Far East. More recently, the Western tradition has also become aware of the significance of dealing with nature in a moral manner. Some see nature as being valuable only for the good of humanity, but many others have come to see it as a good in itself, worthy of moral consideration. With this viewpoint there is no question about whether a Robinson Crusoe would be capable of moral or immoral actions on a desert island by himself. In the morality and nature aspect, he could be considered either moral or immoral, depending upon his actions toward the natural things around him.

Individual Morality
Individual morality refers to individuals in relation to themselves and to an individual code of morality that may or may not be sanctioned by any society or religion. It allows for a "higher morality," which can be found within the individual rather than beyond this world in some supernatural realm. A person may or may not perform some particular act, not because society, law, or religion says he may or may not, but because he himself thinks it is right or wrong from within his own conscience.

A paraphrased version of the Ten Commandments.

The Ten Commandments (Exod. 20:1–17)

1. I am the Lord, Your God; do not worship false gods.
2. Do not take the name of God in vain.
3. Keep holy the Sabbath Day.
4. Honour your father and your mother.
5. Do not kill.
6. Do not commit adultery.
7. Do not steal.
8. Do not bear false witness against your neighbour.
9. Do not covet your neighbour's spouse.
10. Do not covet your neighbour's belongings.

For example, in a Greek legend, a daughter (Antigone) confronts a king (Creon), when she seeks to countermand the king's order by burying her dead brother. In Sophocles' (c. 496–406 B.C.) play, Antigone opposes Creon because of God's higher law; but the Antigone in Jean Anouilh's play opposes Creon not because of God's law, of which she claims no knowledge, but because of her own individual convictions about what is the right thing to do in dealing with human beings, even dead human beings.

This aspect can also refer to that area of morality concerned with obligations individuals have to themselves (to promote their own well-being, to develop their talents, to be true to what they believe in, etc.). Commandments nine and ten, although also applicable to social morality, as we shall see in a moment, are good examples of at least an exhortation to individual morality. The purpose of saying "do not covet" would seem to be to set up an internal control within each individual, not even to think of stealing a neighbour's goods or spouse. It is interesting to speculate why there are no "don't covet" type commandments against killing or lying, for example. At any rate, these commandments would seem to stress an individual as well as a social morality.

Social Morality

Social morality concerns a human being in relation to other human beings. It is probably the most important aspect of morality, in that it cuts across all of the other aspects and is found in more ethical systems than any of the others. Returning briefly to the desert-island example, most ethicists probably would state that Robinson Crusoe is incapable of any really moral or immoral action except toward himself and nature. Such action would be minimal when compared with the potential for morality or immorality if there were nine other people on the island whom he could subjugate, torture, or destroy. Many ethical systems

would allow that what he would do to himself is strictly his business, "as long as it doesn't harm anyone else."

For a majority of ethicists, the most important human moral issues arise when human beings come together in social groups and begin to conflict with one another. Even though the Jewish and Christian ethical systems, for example, importune human beings to love and obey God, both faiths, in all of their divisions and sects, have a strong social message. In fact, perhaps 70 to 90 percent of all of their admonitions are directed toward how one human being is to behave toward others. Jesus stated this message succinctly when He said that the two greatest commandments are to love God and to love your neighbour. These fall equally under the religious and social aspects, but observing the whole of Jesus' actions and preachings, one sees the greater emphasis on treating other human beings morally. He seems to say that if one acts morally toward other human beings, then one is automatically acting morally toward God.

This is emphasized in one of Jesus' Last Judgment parables when He says (and I paraphrase), "Whatever you have done to the least of Mine [the lowest human beings], so have you done it to Me." Three of the Ten Commandments are directed specifically toward God, while seven are directed toward other human beings—the social aspect taking precedence. In other religions, such as Buddhism and Confucianism, the social aspect represents almost all of morality, there being very little if any focus on the supernatural or religious aspect. Furthermore, everything that is directed toward the individual aspect is also often intended for the good of others who share in the individual's culture. Nonreligious ethical systems, too, often stress the social aspect. Ethical egoism, which would seem to stress the individual aspect, says in its most commonly stated form, "*everyone* ought to act in his own self-interest," emphasizing the whole social milieu. Utilitarianism in all of its forms emphasizes the good of "all concerned" and therefore obviously is dealing with the social aspect. Non-consequentialist, or deontological, theories such as Kant's (see Chapter 3) stress actions toward others more than any other aspect, even though the reasons for acting morally toward others are different from those of ethical egoism or utilitarianism.

The important thing to note at this point is that most ethical systems, even the most individualistic or religious, will emphasize the social aspect either exclusively or much more than any of the other aspects.

How, then, are we to use these aspects? We may draw upon them as effective distinctions that will allow us to think in the widest terms about the applicability of human ethics. In the spirit of synthesis, however, it might be wise if we hold these distinctions open in unity so that we can accept into a broad human ethics the religious, nature and morality, and

individual aspects, recognizing nevertheless that most ethical systems meet in the social aspect. We should, in other words, keep our eyes on the first three aspects while we stand firmly planted in the social aspect, where most human moral problems and conflicts occur.

Who is morally or ethically responsible?

Who can be held morally or ethically responsible for their actions? All of the evidence we have gained to date compels us to say that morality pertains to human beings and only to human beings; all else is speculation.

If one wants to attribute morality to supernatural beings, one has to do so on faith. If one wants to hold animals or plants morally responsible for destructive acts against each other or against humans, then one has to ignore most of the evidence that science has given us concerning the instinctual behaviour of such beings and the evidence of our own everyday observations.

Recent experimentation with the teaching of language to animals suggests that they are at least minimally capable of developing some thought processes similar to those of humans. It is even possible that they might be taught morality in the future, as humans are now. If this were to occur, then animals could be held morally responsible for their actions. At the present time, however, most evidence seems to indicate that they, as well as plants, should be classified as either nonmoral or amoral—that is, they should be considered either as having no moral sense or as being out of the moral sphere altogether.

Therefore, when we use the terms *moral* and *ethical*, we are using them in reference only to human beings. We do not hold a wolf morally responsible for killing a sheep, or a fox morally responsible for killing a chicken. We may kill the wolf or fox for having done this act, but we do not kill it because we hold the animal *morally* responsible.

We do it because we don't want any more of our sheep or chickens to be killed. At this point in the world's history, only human beings can be moral or immoral, and therefore only human beings should be held morally responsible for their actions and behaviour. There are, of course, limitations as to when human beings can be held morally responsible, but the question of moral responsibility should not even be brought up where nonhumans are involved.

Where does morality come from?

There has always been a great deal of speculation about where morality or ethics comes from. Has it always been a part of the world, originating from some supernatural being or embedded within nature itself, or is it

strictly a product of the minds of human beings? Or is it some combination of two or all three of these? Because morality and ethics deal with values having to do with good, bad, right, and wrong, are these values totally objective—that is, "outside of" human beings? Are they subjective or strictly "within" human beings? Or are they a combination of the two? Let us consider the possibilities.

Values as Totally Objective

There are three ways of looking at values when they are taken as being totally objective:

1. They come from some supernatural being or beings.
2. There are moral laws somehow embedded within nature itself.
3. The world and objects in it have value with or without the presence of valuing human beings.

The Supernatural Theory

Some people believe that values come from some higher power or supernatural being, beings, or principle—the Good (Plato); the gods (the Greeks and Romans); Yahweh or God (the Jews); God and His Son, Jesus (the Christians); Allah (the Muslims); and Brahma (the Hindus), to name a few. They believe, further, that these beings or principles embody the highest good themselves and that they reveal to human beings what is right or good and what is bad or wrong. If human beings want to be moral (and usually they are encouraged in such desires by some sort of temporal or eternal reward), then they must follow these principles or the teachings of these beings. If they don't, then they will end up being disobedient to the highest morality (God, for example), will be considered immoral, and will usually be given some temporal or eternal punishment for their transgressions. Or, if they believe in a principle rather than a supernatural being or beings, then they will be untrue to the highest moral principle.

The Natural Law Theory

Others believe that morality somehow is embodied in nature and that there are "natural laws" that human beings must adhere to if they are to be moral. St. Thomas Aquinas (1225–1274) argued for this as well as for the supernatural basis for morality. For example, some people will state that homosexuality is immoral because it goes against "natural moral law"—that is, it is against nature for beings of the same sex to sexually desire or love one another or to engage in sexual acts.

Values as Totally Subjective

In opposition to these arguments, there are those who would argue that morality stems strictly from within human beings. That is, they believe that things can have values and be classed as good, bad, right, or wrong if and only if there is some conscious being who can put value on these

things. In other words, if there are no human beings, then there can be no values.

Evaluation of Objective and Subjective Positions

Criticisms of the supernatural theory

Albert Einstein (1879–1955), the great mathematician/physicist, said, "I do not believe in immortality of the individual, and I consider ethics to be an exclusively human concern with no superhuman authority behind it." It is, of course, possible that the supernatural exists and that it somehow communicates with the natural world and the human beings in it. This view is chiefly a belief, based on faith. There is of course rational justification for such a belief, and faith can have a rational basis. Evidence for the existence of a supernatural being is often cited and, indeed, there have been philosophical arguments put forward that attempted to prove God's existence. However, there is no *conclusive* proof of the existence of a supernatural being, beings, or principle. Also, there are a great number of highly diverse traditions describing such beings or principles. This diversity makes it very difficult to determine exactly what values the beings or principles are trying to communicate and which values, communicated through the many traditions, human beings should accept and follow. All of this does not mean that we should stop searching for the truth or for verification of the possibility of supernaturally based values, but it does mean that it is difficult to establish with any certainty that morality comes from this source.

Criticisms of The Natural Law Theory

On the other hand, we certainly talk about "laws of nature," such as the law of gravity, but if we examine such laws closely, we see that they are quite different from man-made laws having to do with morality or the governing of societies. The law of gravity, for example, says, in effect, that all material objects are drawn toward the center of the earth: If we throw a ball into the air, it will always fall back down to the ground. Sir Isaac Newton discovered that this phenomenon occurred every time an object was subjected to gravity's pull, and he described this constant recurrence by calling it a "law of nature." The key word in this process is described, for so called natural laws are *descriptive*, whereas moral and societal laws are *prescriptive*. In other words, the natural law does not say that the ball, when thrown into the air, *should* or *ought to* fall to the ground, as we say that human beings *should not* or *ought not* kill other human beings. Rather, the law of gravity says that the ball *does* or *will* fall when thrown, describing rather than prescribing its behaviour.

The question we should ask at this point is, "Are there any natural *moral* laws that *prescribe* how beings in nature should or ought to behave or not behave?" If there are such moral laws, what would they be? As mentioned earlier, homosexuality is considered by some to be

"unnatural" or "against the laws of nature," a belief that implies the conviction that only heterosexual behaviour is "natural." If, however, we examine all aspects of nature, we discover that heterosexuality is not the only type of sexuality that occurs in nature. Some beings in nature are asexual (have no sex at all), some are homosexual (animals as well as humans), and many are bisexual (engaging in sexual behaviour with both male and female of the species). Human beings, of course, may wish to *prescribe*, for one reason or another, that homosexual or anti-heterosexual behaviour is wrong, but it is difficult to argue that there is some "law of nature" that prohibits homosexuality.

Criticisms of values existing in the world and its objects

Is it feasible or even possible to think of something having a value without there being someone to value it? What value do gold, art, science, politics, and music have without human beings around to value them? After all, except for gold, didn't human beings invent or create them all? It seems, then, almost impossible for values to totally exist in the world and in things themselves.

Criticism of the subjective position

Must we then arrive at the position that values are entirely subjective and that the world in all of its aspects would have absolutely no value if there were no human beings living in it? Let us try to imagine objectively a world without any human beings in it. Is there nothing of value in the world and nature—air, water, earth, sunlight, the sea—unless human beings are there to appreciate it? Certainly, whether or not human beings exist, plants and animals would find the world "valuable" in fulfilling their needs. They would find "value" in the warmth of the sun and the shade of the trees, in the food they eat and the water that quench their thirst. It is true that many things in the world, such as art, science, politics, and music, are valued only by human beings, but there are also quite a few things that are valuable whether human beings are around or not. So it would seem that values are not entirely subjective any more than they are entirely objective.

Values as both subjective and objective—a synthesis

It would seem that at least some values reside outside of human beings, even though perhaps many more are dependent on conscious human beings, who are able to value things. Therefore, it would seem that values are more complex than either the subjective or the objective position can describe and that a better position to take is that values are both objective and subjective.

A third variable should be added so that there is an interaction of three variables as follows:

1. The thing of value or the thing valued.
2. A conscious being who values, or the valuer.
3. The context or situation in which the valuing takes place.

For example, gold in itself has value in its mineral content and in that it is bright, shiny, and malleable. However, when seen by a human being and discovered to be rare, it becomes - in the context of its beauty and in its role as a support for world finances - a much more highly valued item than it is in itself. Its fullest value, then, depends not only on its individual qualities but also on some conscious being who is valuing it in a specific context or situation. Needless to say, gold is one of those things whose value is heavily dependent on subjective valuing. Note, however, that gold's value would change if the context or situation did. For example, suppose someone were stranded on a desert island without food, water, or human companionship but with 100 pounds of gold. Wouldn't gold's value have dropped considerably given the context or situation in which food, water, and human companionship were missing and which no amount of gold could purchase? This example shows how the context or situation can affect values and valuing.

Where does morality come from?

Values, then, would seem to come most often from a complex interaction between conscious human beings and "things" (material, mental, or emotional) in specific contexts. But how can this discussion help us answer the question of where morality comes from? Any assumptions about the answer to the question of morality's origins certainly have to be speculative. Nevertheless, by observing how morality develops and changes in human societies, one can see that it has arisen largely from human needs and desires and that it is based upon human emotions and reason.

It seems logical to assume that as human beings began to become aware of their environment and of other beings like them, they found that they could accomplish more when they were bonded together than they could when isolated from one another.

Through deep feelings and thoughts, and after many experiences, they decided upon "goods" and "bads" that would help them to live together more successfully and meaningfully.

These beliefs needed sanctions, which were provided by high priests, prophets, and other leaders. Morality was tied by these leaders not only to *their* authority but also to the authority of some sort of supernatural

being or beings or to nature, which, in earlier times, were often considered to be inseparable.

For example, human beings are able to survive more successfully within their environment in a group than they can as isolated individuals. However, if they are to survive as a community, there must be some prohibition against killing. This prohibition can be arrived at either by a consensus of all the people in the community or by actions taken by the group's leaders. The leaders might provide further sanctions for the law against killing by informing the people that some supernatural being or beings, which may or may not be thought to operate through nature, state that killing is wrong. It is also possible, of course, that a supernatural being or beings who have laid down such moral laws really exist. However, because most of these laws have in fact been delivered to human beings by other human beings (Moses, Jesus, Buddha, Muhammed, Confucius, and others), we can only say for sure that most of our morality and ethics comes from ourselves—that is, from human origins. All else is speculation or a matter of faith. At the very least, it seems that morality and moral responsibility must be derived from human beings and applied in human contexts. Furthermore, people must decide what is right or good and what is wrong or bad by using both their experience and their best and deepest thoughts and feelings and by applying them as rationally and meaningfully as they can. This brings us to the important distinction between customary or traditional and reflective morality.

Customary or Traditional And Reflective Morality

Customary or Traditional Morality

We are all quite familiar with customary or traditional morality because we are all born into it; it is the first morality with which we come into contact. Morality that exists in various cultures and societies is usually based on custom or tradition, and it is presented to its members, often without critical analysis or evaluation, throughout their childhood and adult years. There is nothing necessarily wrong or bad about this approach to training society's youth and also its members as a whole. Many customs and traditions are quite effective and helpful in creating moral societies. As suggested in the previous paragraph, many moral teachings have arisen out of human need in social interaction and have become customs and traditions in a particular society. For example, in order to live together creatively and in peace, one of the first moral teachings or rules has to be about taking human life because, obviously, if life is constantly in danger, then it is very difficult for people to live and work together. However, for customs and traditions to be effective and continuously applicable to the members of a society, they must be critically analyzed, tested, and evaluated, and this is where reflective morality comes in.

Reflective Morality

Philosophers in general demand of themselves and others that every human belief, proposition, or idea be examined carefully and critically to ensure that it has its basis in truth. Morality is no different from any other area of philosophic study in this respect. Philosophers do not suggest that custom and tradition be eliminated or thrown out, but they do urge human beings to use reason to examine the basis and effectiveness of all moral teachings or rules, no matter how traditional or accepted they are. In other words, philosophy requires human beings to reflect on their moral customs and traditions to determine whether they should be retained or eliminated. The revered Greek philosopher Socrates (470?–399 B.C.) said, "The unexamined life is not worth living."

For morality, a corollary might be, "The unexamined custom or tradition is not worth living by." Therefore, just as people should not accept statements or propositions for which there is no proof or significant logical argument, so they should not accept moral customs or traditions without first testing them against proof, reason, and their experience.

A good example of reflective morality is an examination of the aforementioned Ten Commandments, which many people in Western culture swear by and claim to follow. Interestingly enough, a good many people don't even know what most of them are (with the possible exception of the one against committing adultery, which everyone seems to know!) and often cannot even list them in order or otherwise. Further, how many have examined them in the manner suggested in this chapter and realized that they apply to different aspects of morality? How many people realize that the first three commandments apply only to human beings in relationship to a supernatural being or beings, that commandments four through eight apply to their relationships with others, and that nine and ten basically apply to themselves as individuals?

It is important, then, that all customs, traditions, systems of ethics, rules, and ethical theories should be carefully analyzed and critically evaluated before we continue to accept or live by them. Again, we should not reject them out of hand, but neither should we endorse them wholeheartedly unless we have subjected them to careful, logical scrutiny. Throughout the remaining chapters of this book, you will be strongly encouraged to become reflective thinkers and practitioners when you are dealing with morality and moral issues.

Morality, Law, And Religion

At this point, it is important that we use reflection to distinguish morality from two other areas of human activity and experience with

which it is often confused and of which it is often considered a part: law and religion.

Morality and the Law

The phrase *unjust law* can serve as a starting point for understanding that laws can be immoral. We also have "shysters," or crooked lawyers, who are considered unethical within their own profession. The Watergate conspirators, almost to a man, were lawyers, and the men who tried and judged them were also lawyers. Obviously, morality and the law are not *necessarily* one and the same thing when two people can be lawyers, both having studied a great deal of the same material, and one is moral, whereas the other is not. The many protests we have had throughout history against unjust laws, where, more often than not, the protestors were concerned with "what is moral" or a "higher morality," would also seem to indicate that distinctions must be made between law and morality. Does all of this mean that there is no relationship between law and morality? Is law one thing that is set down by human beings and morality something else that they live by? Is there no connection between the two? A "yes" answer to these questions would be extremely hard to support because much of our morality has become embodied in our legal codes. All we have to do is review any of our legal statutes at any level of government, and we find legal sanctions against robbing, raping, killing, and physical and mental mistreatment of others. We will find many other laws that attempt to protect individuals living together in groups from harm and to provide resolutions of conflicts arising from differences—many of them strictly moral—among the individuals composing these groups.

What, then, is the relationship between law and morality? Michael Scriven points out one important difference when he discusses the differences and distinctions among the Ten Commandments, which are some of the earlier laws of Western culture believed by Christians and Jews to have been handed down by God. Scriven distinguishes between the laws against coveting and the laws against murder, stealing, and adultery (see Figure 1–1). There is no way a law can regulate someone's desire for another man's wife or belongings as long as the adulterous act or the act of stealing is never carried out. Therefore, the statements about coveting contained in the Ten Commandments would seem to be moral admonitions with regard to how one should think or maintain one's interior morality, whereas statements against stealing, murder, and adultery are laws, prohibitions that are in some way enforceable against certain human acts. The law provides a series of public statements—a legal code, or system of do's and don'ts—to guide humans in their behaviour and to protect them from doing harm to persons and property. Some laws have less moral import than others, but the relationship between law and morality is not entirely reciprocal. What is moral is not

necessarily legal and vice versa. That is, you can have morally unjust laws, as mentioned earlier. Also, certain human actions may be considered perfectly legal but be morally questionable. For example, there were laws in certain parts of the United States that sanctioned the enslavement of one human being by another, despite the fact that freedom and equality for all human beings is a strong basic principle of most ethical systems. It is an important principle in many societies, in theory if not always in action, and it is an important part of the Declaration of Independence and U.S. Constitution that each person within the society ought to have a certain amount of individual freedom and a definite moral equality. (This principle will be discussed more fully later on.) If individual freedom and equality are considered to be moral, then laws preventing them must be immoral. To take another example, there is no law against a large chain store's moving into an area and selling products at a loss in order to force the small store owners out of business. But many ethicists would make a case for the immorality of an action that would result in harm to the lives of the small store owners and their families. Another example of the distinction between law and morality is the recent increase of ethics courses as a significant part of the curriculum in most law schools across the nation. Since scandals such as Watergate, Whitewater, and the Rodney King and O. J. Simpson trials, the public's opinion of lawyers is at an all-time low, but whether lawyers are popular with the public is not the point. Ethics and ethical behavior seem to be missing from many lawyers' activities to such a degree that law-school faculties have seen an intense need for courses that teach future lawyers the rules of ethical behavior within their profession. Also, many states now require that lawyers who did not have the benefit of a strong ethics course in school take ethics refresher courses. All of this is an indication that to be schooled in the law is not necessarily to be instilled with ethical standards of behavior. In fact, it should be obvious, then, that morality is not necessarily based on law. A study of history would probably indicate the opposite—that morality precedes law, whereas law sanctions morality; that is, law puts morality into a code or system that can then be enforced by reward or punishment. Perhaps the larger and more complex the society, the greater the necessity for laws, but it is not inconceivable that a moral society could be formed having no legal system at all—just a few basic principles of morality and an agreement to adhere to those principles. This is not to suggest that law should be eliminated from human affairs, but rather to show that law is not a necessary attribute of morality.

Can law, however, do without morality? It would seem that morality provides the reasons behind any significant laws governing human beings and their institutions. What would be the point of having laws against killing and stealing if there were not some concern that such acts were immoral? Very few laws have no moral import. Even laws

controlling the incorporation of businesses, which do not seem to have any direct moral bearing on anyone, function at least to ensure fairness to all concerned—stockholders, owners, and employees. It is difficult to think of any law that does not have behind it some moral concern—no matter how minor or remote.

We can say, then, that law is the public codification of morality in that it lists for all members of a society what has come to be accepted as the moral way to behave in that society. Law also establishes what is the moral way to act, and it sanctions—by its codification and by the entire judiciary process set up to form, uphold, and change parts of the code—the morality that it contains. The corrective for unjust laws, however, is not necessarily more laws, but rather valid moral reasoning carried on by the people who live under the code. Law is a public expression of social morality and also is its sanction. Law cannot in any way replace or substitute for morality, and therefore we cannot arbitrarily equate what is legal with what is moral. Many times the two "whats" will equate exactly, but many times they will not; and indeed many times what is legal will not, and perhaps should not, completely cover what is moral. For example, most ethicists today seem to agree that except for child molestation and forced sexuality of any kind, there should be no laws governing sexuality among consenting adults. Given this view, one can discuss adult sexual morality without bringing in legal issues. To summarize: It should be obvious that law serves to codify and sanction morality, but that without morality or moral import, law and legal codes are empty.

Morality and Religion

Can there be a morality without religion? Must God or gods exist in order for there to be any real point to morality? If people are not religious, can they ever be truly moral? And if belief in God is required in order to be moral, which religion is the real foundation for morality? There seem to be as many conflicts as there are different religions and religious viewpoints.

Religion is one of the oldest human institutions. We have little evidence that language existed in prehistoric times, but we do have evidence of religious practices, which were entwined with artistic expression, and of laws or taboos exhorting early human beings to behave in certain ways. In these earlier times, morality was embedded in the traditions, mores, customs, and religious practices of the culture. Furthermore, religion served (as it has until quite recently) as a most powerful sanction for getting people to behave morally. That is, if behind a moral prohibition against murder rests the punishing and rewarding power of an all-powerful supernatural being or beings, then the leaders of a culture have the greatest possible sanction for the morality they want their followers

to uphold. The sanctions of tribal reward and punishment pale beside the idea of a punishment or reward that can be more destructive or pleasurable than any that one's fellow human beings could possibly administer. However, the notion that religion may have preceded any formal legal or separate moral system in human history, or that it may have provided very powerful and effective sanctions for morality, does not at all prove that morality must of necessity have a religious basis. Many reasons can be given to demonstrate morality need not, and indeed should not, be based *solely* on religion.

2.4 Summary

Morality, which is based on many factors remains a fundamental basis for what the nurse believes and what she does for the patient and what the patient also accepts. Morality may vary within the context of environment. Forcing opinions on patients may be tantamount to unwarranted litigations.

Morality and ethics may seem to be synchronous, but the law overrides them and ultimately stipulates what should be done in virtually all circumstances. Nurses need to be aware of what belief systems operate in their practice environment and the extant laws so that there would be a balance in decisions taken for service delivery.

2.5 References/Further Reading/Web Resources

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UNIT 3 ETHICAL THEORIES AND PRINCIPLES APPLIED TO THE PRACTICE OF NURSING.

Unit Structure

3.1 Introduction

Introduction
Philosophical theories, frameworks and ethical principles underpin health care delivery. These perspectives would be considered and contrasted to achieve practical and methodological application and analysis applicable to routine practice.

The health care professions have the reputation of celebrating the uniqueness of their noble calling by espousing codes of professional behaviour. The medical professions' Hippocratic Oath is most probably the best and longest known of the codes regulating ethical conduct. being the Hippocratic Oath associated with the practice of medicine. Breach of ethics and ethical norms and conduct and values could provoke sanctions separate from any legal or contractual sanctions characteristically put in place for any supposed wrong doing.

The codes are often referred to as ethical codes but it is not exactly clear that they are in fact *ethical* codes. The professional codes do not exactly fit in into moral problems but rather lay down rules, duties or standards of behaviour, which are obligations of practitioners holding professional registration as required by that code. Thus, these codes are best regarded as codes of morality rather than codes of ethics.

The application of legal principles in routine nursing practice is quite more complex than it appears to be. Practice issues will often result in conflicts between morality and ethics and practitioners will frequently face dilemmas on the "right thing to do" under the prevailing circumstances with regards to all pertains to the patient.

A plethora of classical and contemporary ethical theories are available in various circumstances. Some are normative, with the objective of prescribing definite standards on what "ought" to be done, while others

are non-normative such that they consider what obtains in actual practice. However, it may suffice to say that the main ethical and moral theories are submerged under the two overarching and apparently irreconcilable ethical theories of utilitarianism and deontology.

The theory of deontology espouses unconditional respect for persons, and may require doing what is right irrespective of the consequences. This approach advocates reliance on principles that can be followed, for example, the principle of respecting a person's autonomy to make informed decisions about their own healthcare. A deontological perspective is prone to be polarised with decisions or actions taken being viewed as either right or wrong.

Utilitarianism is a consequentialist theory with a more populist approach as aims to maximise the greatest good for the majority. Thus, an action is considered to be right if it overall has good consequences, the nature of the action itself is of lesser importance. A utilitarian perspective would consider that freedom, of itself, is good and beneficial, whereas restraint upon freedom is intrinsically evil. By this approach, laws are seen as evil since they impose restraint but such restraint are justifiable if done for the greater good of the society.

3.2 Learning Outcomes

By the end of this module, the student should be able to:

- Discuss the ethical principles critical to decision making in healthcare delivery.
- Describe the various factors which guide the philosophical reflections on the decisions made during service delivery by health care professionals in elective and emergency circumstances.
- Demonstrate the ability to engage the evolved practices in service delivery

3.3 Main Content

3.3.1 The Four Principles Approach to Ethics

The word 'ethics' is a generic term that refers to questions about what is right or wrong, or good or bad, acceptable or not acceptable in matters of human conduct, whereas 'ethical' implies conformity with recognised standards of practice. Four principles are widely recognised as the basis

of the ethical underpinnings of healthcare law - autonomy (self-rule), beneficence (doing good), nonmaleficence (not doing harm), and justice (fairness). This section briefly considers these four principles and their practical application.

3.3.2 Autonomy

Autonomy represents self-determination and is a person's capacity to make deliberated or well-reasoned decisions, and to act on the basis of such decisions without coercion or undue subterfuge manipulation. It represents the capacity of a person to make reasoned choices on the basis of adequate information. Respect for patients' autonomy is pivotal to obligations such as obtaining informed consent, maintaining confidentiality, and is the basis of support behind drives to legalise physician assisted suicide in some climes.

3.3.3 Beneficence

Beneficence is the moral obligation to do good. However, in some management approaches, patients are placed in the line of harm so beneficence tends to be considered in the context of non-maleficence. Obligations to maintain professional competence, promote medical research, develop better clinical guidelines through evidence-based practice are further practical examples of where the principles of beneficence may be applied.

There is the concept of paternalism often encountered in medical practice which is the control of another person's life in the name of that person's own "best interests" will often be justified using the principle of beneficence. Example include going ahead with procedures without obtaining consent or withholding distressing news from a patient may be rationalised as being in patients' best interests. Nevertheless, this invariably undermines patients'' autonomy and rights to justice.

3.3.4 Non-Maleficence

The principle of non-maleficence is the obligation to avoid causing harm, or the risk of harm to others. Instances of care in routine medical practice may, however, involve doing, or risking, harm to achieve a greater benefit for the patient. Examples include the pain caused by the giving of an anaesthetic injection, surgery or the administration of chemotherapy for the potential benefit of the recipient.

Non-maleficence has important and far-reaching implications in dilemmas such as the withholding and withdrawal of treatment, the application of ordinary versus extraordinary care, and the acts versus

omissions distinction in the law relating to euthanasia (as illustrated by *Airedale NHS Trust v Bland* [1993]).

3.3.5 Justice

The principle of justice is predicated on taking fair, just, equitable, and unbiased decisions are taken in favour of the person either in the greatest need or who stands to gain most. Based on proper knowledge of the nature of health, patients' pre-morbid conditions, available management strategies and envisaged outcomes, the provision of medical treatment should be deemed to be just, having considered the overall circumstances. Constraints such as lack of availability of human, financial and physical resources inevitably means that rationing has to take place, which may not be fair in all circumstances, especially to patients and relatives who appears to be on the receiving side and who do not understand the basis for the decisions taken.

3.4 The Relationship between Law and Ethics

While ethics indicate what may be done, the law stipulates what should be done and is therefore sacrosanct, if it remains the extant law. It is highly imperative to consider the interminable relationship between law and ethics because ethical principles frequently form the basis for the emergence and adjudication in medical law. Medical practice is constantly evolving in the face of new technological breakthroughs and how it affects the healthcare industry. Thus, in some circumstances. there may be no legal rules available or cases prior determined (*stare decisis*), and decisions may have to be taken from ethical first principles. This may apply to medical innovations, outcomes of medical research et cetera

3.4.1 The Relationship between Law and Morality

The word "morals" in presumptively colloquial usage to refer to the "goodness" or "badness" of human behaviour, whereas "morality" often describes the shared norms about right and wrong conduct and behaviour. Morality and the law both provide the mechanisms for evaluating and guiding human decisions and actions. Both lend themselves to practical application as they provide the means to answer questions which are germane to developments in routine practice or given situation. Thus, considerations of underlying moral principles are vital in medical law and adjudications in litigations. Some situations may involve consideration of societal morals i.e. the shared morality, or alternatively pose questions from an individual moral perspective.

Where there are conflicts between the views, then the next question would be: what should be the role of the law? Should it be a matter for the individual to choose for themselves without being bothered about the repercussions on a large scale or should the law impose reasonable limits for the greater good of society? A typical example here is the appropriation of crucial finances to meet patients' needs in the best interest of the society. Medical science continues to evolve in the face of technological advancement. Thus, individual and shared moral norms are not absolute principles and may be vary depending on context and time. What was considered immoral twenty, thirty or fifty years ago may no longer be considered in the same way. In certain circumstances, morals can be justifiably overridden by other supervening occurrences or competing moral norms, for example some standard operational policies may be waived in the face of emergencies.

It is pertinent to consider the following on the subject of law and morality, Lord Steyn stated that:
"It may be objected that the House must act like a court of law and not like a court of morals. That would only be partly right. The court must apply positive law. But judges' sense of the moral answer to a question, or the justice of the case, has been one of the great shaping forces of the common law." *McFarlane* v *Tayside Health Board* [1993] 3 WLR 1301
However, it is very important to clarify that although both law and morality offer guidance for personal conduct, they do not always agree together and of course the law is eminently supreme.

The Purposes of Ethical Codes
The prescribed codes of professional conduct serve a number of functions:

- Guidance – intimate members of a profession their responsibilities
- Regulation – regulates behaviour by prescribing the norms of expected/acceptable behaviour.
- Discipline – puts in place disciplinary measures as it allows transgressors to be identified and sanctions imposed.
- Protection – protecting the public especially the vulnerable from persons in positions of power who could abuse them or take advantage of them.
- Information – informs those outside the profession on the expectations from practitioners of the profession.
- Proclamation – the knowledge of the existence of the code proclaims the aspiration of the profession to professional status which is a noble and distinguished achievement.
- Negotiation – the code carries the weight and potential of serving as a veritable tool in negotiations and disputes with colleagues, employers, institutions and governments by

establishing/emphasizing standards and explaining or justifying a stance or course of action.

Deontological, consequentialist and virtue ethics perspectives
Deontology
Deontology theory is based on the belief that right is determined by duty. The outcome of any moral act or ethical decision is not given consideration, rather it is the duty to do the right thing that is paramount. The best-known exponent of this theory was Immanuel Kant.

Thus, caring for someone because you feel it is your duty to do so, not because of pecuniary gains makes it a good act. If you care for someone because you will get paid for it, this is not in itself a good act. Deontology emphasizes that morally good acts are those that are carried out because there is a moral duty to carry them out. Thus, the deontology theory espouses the motivation behind the act as the crucial factor in determining whether a person has acted as they ought to.

Consequentialism
Consequentialism is also referred to as Teleology by some people. Teleology is based on the belief that something and indeed perhaps all things have a specific purpose. This means they have special use or utility. The term is thus extended to consequentialism to define and characterise those actions that have a good moral purpose. The theory of consequentialism justifies the appropriateness of a thing depending on the desirable interest it serves.

Utilitarianism
Utilitarianism is based on the notion of seeking the greatest happiness, benefit and fulfilment for the greatest number of people rather than a particular person or group of people.

Mill's proof for utilitarianism is analytically expressed as follows:
- happiness is a good and a good experience
- each person's happiness is a good to that person
…therefore, the general happiness is a good which is beneficial to the aggregate of all persons.

Virtue Ethics
Virtue ethics has its origins in ancient Greece and is largely attributed to Aristotle. Virtue ethics is concerned with the innate character of a person rather than the consequences of his actions.

Ancient virtue ethics
Aristotle's view was that humans do not have the innate sense of morality to do good but that they must learn it and get accustomed to

doing good by practising them. He suggested that people may practice good or bad acts and that eventually become habitual. Thus, in order to become a good person one has to deliberately practice the virtues.

Modern virtue ethics

Virtue ethics has now been developed to a point where it provides a seemingly convincing and plausible alternative to both consequentialist and Kantian ethics. Such evolution of thought was borne out of dissatisfaction with consequentialist and Kantian approaches to ethics.

Self-Assessment Exercise

Discuss the ethical principles critical to decision making in healthcare delivery.

3.5 Summary

This unit Discuss the ethical principles critical to decision making in healthcare delivery and the various factors which guide the philosophical reflections on the decisions made during service delivery by health care professionals in elective and emergency circumstances.

3.6 References/Further Reading/Web Resources

Berman, A., Snyder, S. J., Kozier, B., Erb, G. L., Levett-Jones, T., Dwyer, T., Hales, M., Harvey, N., Moxham, L., & Park, T. (2014). *Kozier & Erb's fundamentals of Nursing Australian edition* (Vol. 3). Pearson Higher Education AU.

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UNIT 4 TRUTH TELLING, WHITE LIE AND CONFIDENTIALITY

4.1 Introduction

Keeping the patients well and fully informed with serial updates about diagnosis, management trends, complications and prognosis is one of the patient's rights in any healthcare system. Although virtually all healthcare providers have the same viewpoint about rendering the truth in the general interactions with patients and the treatment process, sometimes the truth is not told to or withheld from the patients and their relations; and healthcare staff tell so-called "white lie" instead.

4.2 Learning Outcomes

By the end of this unit, you should be able to:

- Examine the concept of white lie
- Describe the indispensability of truth telling in all nurse-patient interactions
- analyzed what confidentiality is and the fiduciary role between nurses and patients

4.3 Main Content

4.3.1 Definition

A white lie is a deliberate deceptive interaction to convey a lie absolutely contrary or modified, to the truth so as to prevent injury or grief or to protect people's feelings. The history of medicine shows ample evidence of Greek physicians failing to disclose the whole information to patients or they deliberately provided them with inaccurate one in order to get them to accept treatments. Some people claim that truth-telling or accurate information provision to patients about the outcome of an illness can aggravate prognosis. Acceptable and

proper communication is one that patients and relations understand all that their cases entail and are part of the decision making. Such effective communication is pivotal to ideal healthcare delivery. It is the deserving and inalienable right of every patient to receive the absolutely correct and complete information about their diagnoses, stage/progress of disease, complications of the disease itself or complications of the treatment even when iatrogenic, treatment modalities and prognosis.

While in the past, it was tolerable to convey information that the HCPs consider relevant to patients or might not hurt them emotionally, psychologically etc, in modern times truth telling is more edifying and a celebrated desirable of HCPs.

Although, physicians being ultimate decision makers are the main information source to patients and their families, nevertheless, other healthcare providers, particularly nurses also interact with patients and relations, in fact are the closest of all health care providers to patients and as such may find themselves hiding or perverting the truths as they may be placed in difficult circumstances when telling the truth is difficult and so tell the "white lies". White lies are easily believed by patient and their relations because they hold hospital staff, especially their immediate caregivers in very high esteem, rever them, appreciate them for their unique knowledge and believe them without questioning. A lie of false impression may be conveyed in diverse ways by being told, implied, acted, unwarranted quietness, hypocritical commitment etc

It is pertinent to state that telling a lie is an unethical action neither is it person-oriented practice and as such structures and sanctions for its prevention and management of associated dangers should be put in place.

4.3.2 Benefits of Truth Telling

1. Legally verifiable basis for consent and autonomy: Absolute truth telling about the patient to patients and deserving relatives at all stages of care will make management teams to be litigation-proof. It is the basis for securing a legal informed consent and acceptable autonomy for the patient be giving by a patient. *Montgomery v Lanarkshire Health Board [2015] UKSC 11*http://www.bailii.org/uk/cases/UKSC/2015/11.html is a Scottish medical negligence case that outlines the rule on the disclosure of risks to satisfy the criteria of a truly informed consent.
2. Core component of the fiduciary relationship between patients and caregivers: the relationship between patients and HCPs is fiduciary in nature. The duty of care can only be executed by

guaranteed trust between the patient and his caregiver. Lying/modified truth, to gain advantage of the patient is inexcusable particularly if medical mistakes occur, even if they were not intentional. Whereas, if truth has been the mainstay from the beginning of care, mistakes occurring with duly expressed empathy will mitigate actions that could end in devastating litigations.

3. Enables long-term commitments: Patients open their hearts to HCPs that they trust and may reveal things that are crucial to taking the right decisions about the patient's case management. Thus, truth telling has crucial benefits which includes, physical, psychological benefits that culminates in true autonomy, consent and ultimately patient centered service delivery.

Dangers/Challenges of Truth Telling

a. Patient's deliberate rejection of the truth: Some patients may be unwilling to know the ruth and do not want to be told about their cases and would rather submit themselves to the form of management available for their cases. For such, there must be proper documentation of patient's preference, which must be respected in a patient-centred care.
b. Switched autonomy with probable breach of confidentiality: some patients could empower their relations to receive crucial information on her behalf especially those that have very low threshold to bear news considered disturbing to them. Once again, documentation of the patient's preference is important that confidentiality is not seen to be breached by the HCP.
c. Conflict with ethical principles: Truth telling is ethically good and professionally edifying and dignifying, but it may conflict seriously with unassailable and fundamental but sometimes conflicts with the other ethical principles of beneficence, non-maleficence and autonomy and justice.

The deception of the white for whatever reason is a lame duck that eventually burns out. The truth would eventually be known and all trust would be lost since the fiduciary relationship has been compromised and confidentiality breached.

4.4 Reasons for white lies

Research purposes and clinical trials: To deceive patients to cooperate with health workers to accept treatments (against the norms, against their wills, modified or experimental treatments), use them for research purposes or clinical trials.

Pecuniary reasons: To extort money by false means/pretense from patients/relations such as collecting money to give to another specialist to perform a procedure when such has already been paid for and no new specialist would be engaged.
Pride and egocentricity: over-exaggeration of one's competence or claiming to have a training, competence or skills that one does not have is lie, no matter how well crafted.

Carnal gratification: some nurses may lie to patients to take advantage of them and so violate their confidentiality or dignity by performing unwarranted intimate examination which may lead to rape/sexual assault of patients.

Protection of institutional identity: lies may be told to preserve institutional identity, dignity and time-honoured reputation at the expense of the patient.

False impression of loyalty: HCPs lie to patients/relations so as to be seen to be loyal to institutional leadership, curry favour and advance professionally.

4.5 Truth Telling and White Lie (Therapeutic FIBS)

Effective communication is at the centre of an ideal healthcare delivery system. Every patient has the right to receiving the accurate and complete information about their diagnosis, treatment and prognosis.
In ancient times, withholding information or lying to the patient was acceptable as the primary obligation of the health care worker was to help and not cause distress to the patient- Utilitarianism. However, in recent times, truth telling is the most widely praised quality of a healthcare personnel.

Importance/Value of Truth Telling

1. Only following truth telling can a legal informed consent be giving by a patient. Lying or withholding information means undermining the autonomy of the patient and conflicts with the concept of patient empowerment, shared decision making and a patient centered care.
2. Duty and Trust- According to the philosopher Kant, lying can never be excused. He was of the opinion that if harm came about from truth telling with empathy, then it could be regarded as an accident but if this harm was as a result of a lie, then the liar would be liable.

3. Physical and psychological benefits- Truth telling enables patient empowerment, shared decision making and a patient centred care.

4.6 Summary

Telling the truth consistently whatever the prevailing circumstances is vital to maintain the ethico-legal balance and scanty of fiduciary relationship between the patient and HCPs. Telling lies betrays the confidence the patient has in the nurse and may compromise the mutual trust between the patient and the HCP, which could impact negatively on the management of the patient.

The importance of telling the truth cannot be over-emphasised as it is fundamental to maintaining the confidence of the patient and relations in health institutions and HCPs. Conveyance of information , other than telling the truth as it is leads to a betrayal of patient's trust and damaging of the fiduciary relationship between the patient and the nurse.

4.7 References/Further Reading/Web Resources

Berman, A., Snyder, S. J., Kozier, B., Erb, G. L., Levett-Jones, T., Dwyer, T., Hales, M., Harvey, N., Moxham, L., & Park, T. (2014). *Kozier & Erb's fundamentals of Nursing Australian edition* (Vol. 3). Pearson Higher Education AU.

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MODULE 4 AREAS OF LEGAL LIABILITY AND LEGAL PROTECTION IN NURSING PRACTICE

UNIT 1 THE TORT OF NEGLIGENCE AND MALPRACTICE

CONTENTS

1.0 INTRODUCTION

The law of torts is of great importance because it is designed to protect individuals and organisations, such as clients and health institutions from civil wrongs other than breach of contract. An understanding or knowledge of tortious liability is particularly important in legal nursing and to nurses because most of the cases resulting from nursing activities belong to the category of civil actions. Torts are classified into unintentional and intentional torts. This unit will examine negligence and malpractice which are examples of unintentional tort that may occur in the health care settings.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the concepts of negligence and malpractice
- explain the legal doctrines related to negligence discuss the difference in negligence action explain the differences in negligence action.

3.0 MAIN CONTENT

3.1 Concept of Negligence

Negligence is a misconduct or practice that is below the standard expected of an ordinary, reasonable, and prudent practitioner or a careless or heedless conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. Technically negligence is the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do. In practical terms, negligence is a complex concept of duty, breach and damage, which is suffered by the person to whom the duty is owed. Thus, tortious liability arises from a breach of this duty. Malpractice is that part of the law of negligence applied to professional person such as physicians, dentists and in some cases nurses. The term malpractice is legally superfluous because legal liability of health practitioners and other professionals is determined by traditional principles of negligence and the various intentional torts. In other words, there is no separate theory of malpractice liability. For the nurse‟s action to be considered as a malpractice the court has to accept that a nurse acted on a professional status even though the same principles of liability would be applied. Thus, you can be liable for malpractice if you injure a client while performing a procedure differently from the way other nurses would have done it.

Before a case of nursing negligence or malpractice can be established, four elements must be present.

- The nurse owed the client a duty of care – This implies that you must have or should have had a relationship with the client that involves providing care. Such duty is evident when you have been assigned to care for the client.
- The nurse breached that duty – There must be a standard of care that is expected in the specific situation, which the nurse did not observe. This implies that you failed to act as a reasonable prudent nurse under the circumstance. The standard can come from documents published by the national or professional organisations like the National Association of Nigerian Nurse and Midwives

(NANNM), Boards of Nursing like the Nursing and Midwifery Council of Nigeria (NMCN), Institutional policies and procedures, or Textbooks or Journals, or it may be stated by expert witnesses.

- The client consequently suffered harm – The client must have sustained injury or damage or harm. The plaintiff (client or his representative) will be asked to document the physical injury, medical costs, loss of wages "pain and suffering" and any other damages. The nurse"s negligence (act of omission or commission) was the proximate or legal cause of the plaintiff"s injury. It must be proved that the harm occurred as a direct result of the nurse"s failure to follow the standards and the nurse should have known that failure to follow the standard could result in such harm.

These elements can be summarized using the equation as Duty of care + Damage = Negligence

Box 1: Elements of Negligence

- Evidence of duty of care
- Evidence of breach of the duty of care
- Evidence of loss or injury to the client
- Evidence that the breach of duty was the proximate cause of the loss or injury

3.1.1 Concept of "Your Neighbour"

An important aspect of the tort of negligence is the concept of "your neighbour" in law. This law requires you to take reasonable care to avoid acts or omissions, which you can reasonably foresee is likely to injure your neighbour. Neighbour here refers to persons who will be so affected by your act that you ought reasonably to have them in contemplation as being so affected when you are directing your mind to the act or omission which you are called in question. Generally, the law holds that a person is not liable for an omission to act affirmatively when another person is in danger where there is no definite relationship between the parties, e g passers-by and victims of road traffic accident. In the same vein, though you do not have more duty than anyone else to be a "good Samaritan" to the general public, you have an obligation or duty to help take care of clients under your jurisdiction. Because of the nurse-client relationship, you may be liable for an omission to act as well as an affirmative act. Thus in legal nursing, you and the client are considered as "good neighbours". Thus, special relationship between you and the client imposes a duty upon you to protect the clients that are in danger.

3.2 Basic Nursing Cares Errors that Result in Negligence

Basically nursing care involves assessment of client in order to identify their problem and needs that require nursing intervention. These are formulated into nursing diagnoses, which the nurse plans to intervene and actually intervenes. Errors in any of these activities may result in negligence. Examples of such errors include:

1. Assessment Errors

Assessment errors are errors that may occur during the process of assessing the client to identify his problems. Such errors include:

- Gathering inappropriate and inadequate client information. If you do not gather adequate and appropriate client information, you are not likely to formulate appropriate nursing diagnoses for the client and therefore may not provide appropriate care that will alleviate the client suffering. The implication is that such delay in identifying and treating the client‟s problem may expose client to undue danger and this will make you liable.

- Failure to recognise the significance of certain information. This will result in inappropriate actions that may affect the client adversely.

2. Planning Errors

These include failure to:

- Chart each identified problem. If you do not chart information and the problems identified, the tendency is that you may forget about them and therefore may not take them into consideration in your plan of action in caring for the client.
- Use language in the care plan that other care givers understand. If you fail to use language that other caregivers understand, the result will be that they may not implement the care plan appropriately and this may affect the client adversely.
- Ensure continuity of care by ignoring the care plan. If you ignore the care plan, it may affect the continuity of care. The implication is that the synergism that will move the client to state of good health will not be achieved.
- Give discharge instructions that the client understands. If the client does not understand your instructions, it is likely he/she may not carry them out and this may interfere with his/her treatment regime and affect him adversely.

3 Intervention Errors

These include failure to:

- Interprets and carry out doctor‟s orders.
- Question ambiguous or apparently erroneous doctor‟s order.

- Perform nursing tasks correctly such that the client is adversely affected. For example, incorrect calculation of rate of infusion, administration of wrong dose of drug or via a wrong route, burning of client (burns may be caused by inappropriate application of hot water bottle or solution that is too hot for application), leaving patients without instituting proper precaution like providing rails. Others include ignoring client‟s complaints, client fall from bed or in the toilet, incorrect identification of clients, leaving or forgetting materials or instruments inside a client‟s body, loss of client‟s property and failure to notify the nurse manager if physician is not available to attend to the client, etc.

You must endeavour to avoid all acts of negligence in your practice. However note that it is not all acts of negligence that is actionable.

SELF-ASSESSMENT EXERCISE

i. Define negligence.
ii. What are the elements of negligence?

3.3 Legal Doctrines Related to Negligence

Several legal doctrines are related to negligence. Some that are relevant to nursing are:

- *Respondeat superior*
- *Res Ipsa loquitur*

3.3.1 *Respondeat Superior*

Respondeat superior doctrine assumes that because the nurse is employed by the hospital, the master which is the employer assumes responsibility for the conduct of the nurse and can also be held responsible for malpractice by the nurse. The reason being that:

- It is the employer who is providing the service.
- It is the employer who considered the employee capable of providing the services on his behalf and employed him.
- It is the employer who has the resources to pay the fine and also has the means of recovering what has been lost by paying the fine.

In addition, the employer may be held liable for negligence if he fails to provide adequate human and material resources for nursing care, to properly educate nurses on the use of new equipment or procedures or to orient nurses to the facility.

This doctrine does not imply that the nurse cannot be held liable as an individual nor does it imply that the doctrine will prevail if the employee‟s actions are extraordinarily inappropriate, that is beyond those expected or foreseen by the employer. For example, if you hit a client, your employer could disclaim responsibility because your behaviour is beyond the bounds of expected behaviour.

3.3.2 *Res Ipsa Loquitur* (The Thing Speaks For Itself)

The doctrine of *Res Ipsa Loquitur* applies to cases in which the simple fact that someone was hurt gives rise to an inference that another person, the defendant was negligent. There are three elements of the *res ipsa loquitur* doctrine. They include:

- The harm must have been of the sort that does not ordinarily occur in the absence of negligence.
- The injury producing conduct must have been at some significant time within the control of the defendant charged with the negligence. That is, the circumstances of the injury must indicate that the negligent person was the named defendant.
- The injury must not have resulted from a voluntary assumption by the plaintiff of a known and appreciated risk, or from his own contributory negligence.

In order to defend against a negligence suit you must prove that one or more of the required element is not met. For example, in some cases, the harm cannot be traced to a specific health care provider or standard. An additional defence is “contributory or comparative negligence” on the part of the injured client. In these situations, the client was partly responsible for his/her injury. An example of this is when a client chooses not to follow heath care advice, such as remaining in bed while recovering from a particular treatment like surgery. In such situations, the court may reduce any verdict against the nurse by an amount considered to be the plaintiffs own contribution.

Box 3: Element of Res Ipsa Loquitur

- The harm does not ordinarily occur in the absence of negligence
- The injury producing conduct was within the control of the defendant charged with the negligence The plaintiff did not contribute to the negligence

3.4 Defences in Negligence

There are a number of defences in cases involving the tort of negligence.

These include:

Pure Accident – in case of what the law calls unavoidable or pure accidents, no legal fault lies. Consequently, pure accidents, if proven in a court of law, are a complete bar to the award of damages.

General and Approved Practice – if you are charged with negligence, you can clear yourself if you show that you acted in accord with general and approved practice in the circumstance. This means that it must be approved by those qualified to judge, and also as the last resort by the court itself with the aid of expert evidence.

Intervening Cause- In order that a negligent actor shall be liable for another‟s injury, there must be a proximate or legal cause; that is a connection between the negligent act and the resultant harm. If you are able to prove that your act was not the proximate cause of the plaintiff injury but other intervening factors, you may not be liable for the tort of negligence.

Contributory Negligence – This is probably the most common defence to a negligence action. A defendant could normally escape liability if he could show that despite his negligence, the plaintiff should not be denied judgment for the reason that he too is guilty of an act of carelessness that contributed to his injury. Thus, contributory negligence refers to failure by the plaintiff to exercise prudence for his own safety, and which failure is a contributory factor bringing about the plaintiff‟s harm.

Comparative Negligence – the drastic and impalpable effects associated with contributory negligence, particularly in circumstances where the plaintiff is found to be slightly negligent and the defendant greatly negligent have led courts to endeavour to pro rata damages based on the degree of fault. The result of this effort is the adoption of comparative negligence rules. Such that in a law suit, where both the defendant and the plaintiff are negligent, the defence of comparative negligence requires the judge to apportion damages proportionately.

Assumption of Risk – The defence of the assumption of risk against negligence may be defined generally as voluntary exposure to a known risk. A plaintiff‟s assumption of the risk may be expressed or implied. An assumption of risk is also a complete bar to the plaintiff‟s recovery of claim.

Immunity – this is generally conferred on the following:

- National and state governments, unless abrogated by statute.
- Public officials performing quasi–judicial or discretional functions.
- Charitable organisations granted immunity in some states.
- Infants under certain conditions.
- Insane persons in some cases.

4.0 CONCLUSION

You must endeavour to have good knowledge and understanding of what your responsibilities are to your client, make effort to carry them out in line with stipulate standards and avoid every act of omission or commission that will cause injury or harm to your client. This way you will prevent exposure to charges of negligence or malpractice.

5.0 SUMMARY

In this unit you have learnt that:

- Negligence is a failure or breach of legal duty to exercise due care when there is a foreseeable risk of harm or damage to others.
- Elements of negligence include duty of care, breach of duty of care, loss or injury and the breach of duty of care was the proximate cause.
- Negligence could be in form of assessment errors, planning errors and intervention errors.
- Legal doctrines related to negligence that are relevant to nursing include; *respondeat superior* (the master assumes responsibility) and *Res Ipsa Loquitur* (The thing speaks of itself).
- Defences in negligence action include, pure accident, general and approved practice, intervening cause, contributory negligence, comparative negligence, assumption of risk and immunity.

7.0 REFERENCES/FURTHER READING

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UNIT 2 INTENTIONAL TORTS THAT ARE RELEVANT IN NURSING PRACTICE

CONTENTS

1.0 INTRODUCTION

In the last unit, we mentioned that an understanding or knowledge of tortious liability is particularly important in legal nursing and to nurses because most of the cases resulting from nursing activities belong to the category of civil action. We also mentioned that torts are classified into unintentional and intentional torts and in that unit, we examined unintentional torts. This unit will examine intentional torts that have relevance in nursing practice and they include, trespass to person, defamation and invasion of privacy.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the concept of intentional tort

- differentiate between intentional and unintentional torts discuss the intentional torts that have relevance in nursing.

3.0 MAIN CONTENT

3.1 Concept of Intentional Tort

Intentional tort implies proceeding intentionally to act in a way, which invades the rights of another. It may result from intended act whether accomplished by enmity, antagonism, and maliciousness or no more than a good–natured practical joke. Intentional tort can take various forms and include, trespass to the person, infliction of mental or emotional stress, defamation, invasion of privacy, and intentional harm to property.

3.2 Differences between Intentional and Unintentional Torts

- If you do not know with substantial certainty the result of your act and injury results, then you have not committed an intentional tort, but you have been negligent. This implies that for intentional tort, the act was executed on purpose, while for unintentional tort the act was not executed on purpose.
- Harm is a required element for unintentional tort, while for intentional tort; harm need not be caused for liability to exist.
- Expert witnesses are needed in unintentional tort, while for intentional tort; no expert witness is needed as no standard is involved.

3.3 Intention Torts that have Relevance in Nursing

The intentional torts that have relevance in nursing include trespass to person, invasion of privacy, defamation and intentional harm to
property.

3.3.1 Trespass to Person

Trespass is an ancient legal concept that simply means a “wrong”. Trespass to person comprises three main forms namely assault, battery and false imprisonment.

3.3.1.1 Assault

Assault, in a strictly legal sense is an overt act or attempt, offer or threat to apply force or do violence to another in such a manner as to cause him to be in apprehension of an immediate danger or bodily injury. It is an intentional tort committed without any form

of physical “touching” taking place but only a threat. It must be established that the defendant who made the threat to use the force had the apparent present ability to execute his threat. Example of assault could be a person who threatens someone by making a menacing gesture with a knife or a closed fist is guilty of assault. In nursing, a nurse who threatens a client with an injection because the client refused to take the medication orally would be committing assault.

An essential element of assault is that the person in danger of immediate bodily harm has knowledge of the danger and is apprehensive of its imminent threat to his safety. For example, if Hilary aims a loaded gun at Robin‟s back but is subdued by Charles before Robin becomes aware of the danger, then Hilary has not committed an assault upon Robin. In essence, for an assault to occur there must be a threat and there must be apprehension.

3.3.1.2 Battery

Battery is the actual physical contact that usually, but not always, follow an assault, it is the willful touching of a person or the person‟s clothes or even something the person is carrying, that may or may not cause him harm. To be actionable in law the touching must be wrong in some way, for example, done without permission, is embarrassing, or causing injury. In the previous example, if the nurse followed through on the threat and gave the injection without the client‟s consent, the nurse would be committing battery. Liability applies even though the physician ordered the medication or the activity and even if the client benefits from the nurse‟s action. Consent is required before procedures are performed.

Battery exists when there is no consent, including when the plaintiff was not asked for consent. Unless there is implied consent, such as in life – threatening emergencies, a procedure performed on an unconscious client without informed consent is battery. Another requirement for consent is that the client should be competent to give consent. If you are uncertain, whether a client, refusing treatment, is competent, you should consult your supervisor and the physician in order that ethical treatment that does not constitute battery can be provided. Determination of competency is not a medical decision but is one made through the court.

In an action for assault and/or battery, these are two most common defences available to the defendant; consent and privilege. In law it is assumed that consent negates legal injury. In certain circumstances, a person‟s intentional touching of another without consent may be excused or socially justified. The most common privilege asserted is self-defence, which allows you to use reasonable force to prevent personal harm. The degree of force must not be more than is reasonably necessary in the circumstance. In other words the privilege is limited to the use of force which reasonably appears to be necessary to protect against the threatened injury.

3.3.1.3 False imprisonment

False imprisonment also sometimes referred to as false arrest, is the third form of trespass to person and is connected with the right to freedom of movement. The tort of false imprisonment is defined generally as intentionally causing the confinement of another without consent or legal justification. It is the deprivation of the freedom of movement of another for any period, however short, without lawful justification. False imprisonment does not require force. The fear of force to restrain or detain the individual is sufficient. False imprisonment accompanied by forceful restrain or threat of restraint is battery or assault.

Although nurses may suggest under certain circumstances that a client remain in hospital room or bed, the client must not be detained against the client‟s will. The client has a right to insist on leaving even though it may be detrimental to his health. In such a case the client may leave after signing "against medical advice" (AMA) form. As with assault and battery client‟s competency is a factor in determining whether there is a case of false imprisonment or a situation of protecting a client from injury. It is important that you become aware of the health institution‟s policy regarding the application of restraint to guide you in such dilemmas.

In law, to avoid liability in a case of false imprisonment, the defendant must prove that he has reasonable grounds to believe the plaintiff committed a crime or suspected that the plaintiff was about to commit an arrestable offence. Secondly, he may avoid liability by proving the plaintiff consented to have his movement restricted by the defendant.

Box 1: Forms of trespass to person

- Assault
- Battery False imprisonment

SELF-ASSESSMENT EXERCISE

i. Define intentional tort.
ii. Differentiate between intentional and unintentional torts.

3.3.2 Invasion of Privacy

Invasion of privacy is a direct wrong of a personal nature. It injures the feelings of the person and does not take into account the effect of the revealed information on the standing of the person in the community. The right to privacy is the right of individuals

to withhold themselves and their lives from public scrutiny. It can also be described as the right to be left alone. Liability can result if the nurse breaches confidentiality by passing on confidential client information to others or intrudes into the client‟s private domain. There should be a balance between the need of a number of people to contribute to the diagnosis and treatment of a client and client‟s right to confidentiality.

In most situations necessary discussion about a client‟s medical condition is considered appropriate, but unnecessary discussions and gossips are considered a breach of confidentiality. Necessary discussion involves only those engaged in client‟s care.

There are four types of invasion from which the client must be protected:

- Use of the client‟s name or likeness for profit without consent. This refers to use of identifiable photographs or names as advertising for the health care agency or provider without the client‟s permission.
- Unreasonable intrusion like taking photographs for any purpose without client‟s consent.
- Public disclosure of private facts. Private information, usually considered offensive is given to others who have no legitimate need for the information e.g. disclosing a client‟s HIV status to others.
- Putting a person in a false light. This type of invasion involves publishing information that is normally considered offensive and that is not true.
- The defences available to a defendant in an action of tort for invasion of privacy is the assertion that the person whose interest is being invaded is dead and therefore the plaintiff has no cause of action. The other defences include consent (expressed or implied) and constitutional privilege, that is the right to give publicity to public figures or publish news or matters of public interest.

3.3.3 Defamation

One of the most important rights of a person is the right to a good name or reputation. The law therefore requires all persons to refrain from attacking the reputation of others. Defamation of character is the intentional or negligent unjustified publication of a matter or statement that tends to harm a person‟s good name or reputation or lower him in the estimation of right thinking members of society or tend to make them hold him in contempt to ridicule or to avoid him. Nurses and other health care providers are particularly susceptible to actions of defamation or invasion of privacy because of the sensitive personal information about clients that they have to handle or come in contact with each day in the course of caring for clients. It is therefore important that you have a good understanding of the tort of defamation so that you will be properly guided in the type of records that you keep.

Defamation is of two types namely, libel and slander:

- Libel is a written or printed statement that damages a person‟s reputation or good name. In other words, libel is defamation of character made in some lashing form. Libelous matter may be published in a variety of forms e.g. newspaper cartoon, pictures, etc. Writing in the nurses‟ notes that a physician is incompetent because he did not respond immediately to a call or making a written report alleging that a colleague collects bribe from clients before rendering care are examples of libel.
- Slander is a defamatory statement made orally. It is stating unprivileged (not legally protected) or false words by which a reputation is damaged. It is in a transient form, that is, spoken word. For example, a nurse telling a client that another nurse is incompetent.

The defamation material must be communicated to a third party such that the person‟s reputation may be harmed. This implies that a comment made in private criticizing the person‟s competence is not defamation since a third party did not hear it.

As a nurse, you have a qualified privilege to make statements that could be considered defamatory, but only as a part of nursing practice and only to a physician or another health team member caring directly for the client.

3.3.3.1 The Elements of Defamation

To hold a defendant liable in an action of defamation, the plaintiff must prove a number of points and they are as follows:

a. The words must be defamatory: that is, the statement must be capable of lowering the plaintiff‟s reputation in the eyes of right – thinking members of society.
b. The words complained of must refer to the plaintiff. This may be easy where he is named. It may be more difficult where a person recognises himself as the character in the statement.
c. The statement must have been published. This implies that it must have been communicated to at least one person other than the plaintiff. Any defamatory statement that has been communicated to the plaintiff only e.g. in a private conversation or by personal letter, has not been published and would therefore not be actionable.
d. Libel is actionable without the necessity of proving that the plaintiff had suffered any damage. On the other hand, slander is actionable only if the plaintiff has suffered some pecuniary loss (damages) as a result of the defamatory statement, or if the slander falls into one of the following four classes.

    - Where there has been an imputation that the plaintiff has been guilty of a criminal offence punishable by imprisonment.

- Where an imputation of unchastity has been made against a girl or woman.
- Where it has been alleged that the plaintiff is suffering from a contagious or infections disease e.g. HIV/AIDS, tuberculosis, etc.
- Where words have been used and calculated to disparage the plaintiff in his office, business or other occupation by imputing dishonesty, incompetence, or other unfitness for the work which he is doing.

Box 2: Elements of defamation

The words must be defamatory

The words complained of must refer to the plaintiff

- The statement must have been published
- Libel is actionable without the necessity of proving the plaintiff suffered any damage while slander is actionable only if the plaintiff has suffered damage as a result of the defamatory statement

3.3.3.2 Defences in Action of Defamation

There are two major defences available in tort; they are truth and privilege. Other less special are fair comment, unintentional defamation and consent.

Truth (or Justification) is an absolute defence in a defamation action, that is, if the defendant can show that the publication, which he made, was true in substance and fact, the person claiming to have been libeled cannot recover damages.
Privilege is of two types – absolute and qualified. Absolute privilege is applied to:

(a) Statement made innocently or maliciously by legislators in parliament and not outside parliament.
(b) Statement made by witness in legislative and quasi legislative hearing.
(c) Statements made in the course of judicial or quasi-judicial proceedings by judges, the parties, witnesses, advocates, or jurors
(d) Newspaper or broadcast reports of judicial proceedings provided they are, and appear at the time the proceedings are taking place.
(e) Legislative papers published on the authority of the house of legislature.
(f) Any statement made by a superior officer of state or department to another in exercise of their official duty e.g. an official report sent by one civil servant to another.
(g) Statements made with the consent of the defamed person.
(h) Certain political broadcasts required by federal law.
(i) Statements made between husband and wife, lawyer and client, priest and penitent.

Qualified or conditional privilege covers statements made by one person to another, where the person making the statement had a moral, social, or legal duty to make the statement to whom he made it provided it was done without malice. Example is a nurse giving relevant information about a client to a physician to aid him in his management of the client. The privilege may be lost if defamatory matter is published outside the interested group. Qualified privilege requires that the statement be made in good faith and without malice, upon reasonable grounds, and in answer to inquiry. It must be made with regard to assisting or protecting the interests of either party involved or in performing a duty to society. In other words, to claim qualified privilege, it is necessary for the person making the statement to believe at the time he made it, that the substance of what he said is true.

Fair comment is another defence opens to a defendant in a case of defamation. The comment must be on matter of public interest. The requisites of fair comment are as follows:

a. The matter commented on must be of public interest.
b. It must be an expression of opinion and not an assertion of fact.
c. The comment must be fair.
d. The comment must not be malicious; that is, it must not have an evil motive.

Some relief is given to a defendant who has innocently defamed another (unintentional defamation). Such a relief may take the form of an offer, e.g. a full apology to the person whose reputation may have been injured. Such apology may also include a prompt notification of the falsity of the statement to the public to which it was made. The apology may be accompanied by a reasonable financial compensation.

3.3.4 Intentional Harm to Property

Client‟s property, such as jewelry, money, eyeglasses, and dentures, is a constant concern to hospital personnel. These days, agencies are taking less responsibility for client properties and are generally requesting clients to sign waiver, on admission, relieving the hospital and its employees of any responsibility for clients‟ properties. Situations arise, however, in which the client cannot sign a waiver and must follow prescribed policies for safeguarding the client‟s property. You are expected to take reasonable precautions to safeguard a client‟s property because you can be held liable for its loss or damage if you do not exercise reasonable care.

Another tort law that has to do with harm to client property is conversion. Conversion is the unlawful use, appropriation or deprivation of property belonging to another. For example, it is an offence for you to remove from the ward stock materials collected for clients care and enter in the register that they have been used for the client. If such is found out, you will be held liable.

Other torts and crimes occasionally involving nurses in their professional practice are forgery, kidnapping, rape, and bribery. Forgery is fraudulent alteration of written documents or items such as birth certificate, cheque, death certificate, or excuse duty certificates. Kidnapping is stealing and carrying off a human being, particularly a child. There had been incidents of newborn babies kidnapped from the labour room. So you have to be very careful in discharging your duties. Rape is an illegal sexual intercourse, while bribery is an offer of reward to cover a wrong deed.

4.0 CONCLUSION

Clients, who come to you, come with problems and needs and the expectation that you will assist them to solve these problems and meet their needs. Do not take undue advantage of their vulnerability and inflict intentional harm on them. If you do, you will be made to face the penalty.

5.0 SUMMARY

In this unit, you have learnt that:

- Intentional tort implies proceeding intentionally to act in a way that invades the rights of another.
- The differences between intentional and unintentional torts are that in intentional tort the act was executed on purpose, harm may not be present and expert witness is not needed while for unintentional tort, the act was not executed on purpose, harm must present and expert witnesses are needed.
- Intentional torts relevant in nursing include; trespass to person, invasion of privacy, defamation and intentional harm to property.
- Trespass to person means wrong to a person and comprises three main forms namely assault, battery and false imprisonment.
- Invasion of privacy is a direct wrong of a personal nature which may involve passing on confidential client information to others or intrusion into the client‟s private domain.
- Defamation of character is the intentional or negligent unjustified publication of a matter that tends to harm a person‟s good name or reputation and is of two types namely, libel and slander.
- Intentional harm to client property can be in form of conversion, which is the unlawful use, appropriation or deprivation of property belonging to another.

6.0 TUTOR-MARKED ASSIGNMENT

Differentiate between intentional and unintentional torts.

7.0 REFERENCES/FURTHER READING

Anarado, A. N. (2002). *Ethics and Law in Nursing Practice*. Enugu: Snaap Press.

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UNIT 3 LEGAL PROTECTIONS IN NURSING PRACTICE

CONTENTS

1.0 INTRODUCTION

In carrying out their nursing responsibilities, nurses are faced with many situations that expose them to legal liability. It is important, therefore, that they are protected. This is achieved through enacting laws that protect nurses in emergency and by the nurses performing their jobs properly and by taking other necessary steps. This unit examines the laws that have been put in place to protect health care providers and the things that nurses can do to protect themselves from legal liability.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the laws designed to protect health care providers
- discuss actions that should be taken by the nurse to protect against liability.

3.0 MAIN CONTENT

3.1 Laws Designed to Protect Health Care Providers

Available statutes do not require citizens to render aid to people in distress. Such assistance is considered more of an ethical than a legal duty. This implies that an individual cannot be charged because he did not stop to render assistance to someone in distress. Many who do so, do so because they see it as a moral or ethical obligation. To encourage citizens to be good Samaritans, some states have enacted legislation releasing a good Samaritan from legal liability for injuries caused under such circumstances and this is termed the good Samaritan Acts.

3.1.1 Good Samaritan Acts

These are laws designed to protect health care providers who provide assistance at the scene of an emergency against claims of malpractice unless it can be shown that there was a gross departure from the normal standard of care or willful wrong doing on their part. Gross negligence usually involves further injury or harm to the person. It is generally believed that a person who renders help in an emergency, at a level that would be provided by any reasonable prudent person under similar circumstances cannot be held liable. The same reasoning applies to nurses, who among the people are best prepared to help at the scene of an accident. If the level of care a nurse provides is of the caliber that would have been provided by any other nurse, then the nurse will not be held liable. There are however, guidelines for nurses who choose to render care at emergency sites. They include:

- Limit actions to those normally considered First Aid if possible.
- Do not perform actions that you do not know how to do.
- Offer assistance, but do not insist.
- Do not leave the scene until the injured person leaves or another qualified person takes over.
- Contact necessary authority.

If you abide by these guidelines, it is likely that you will not do things that will bring about litigation.

3.2 Actions to be taken to Protect against Liability

There are several things that you can do to protect yourself against liability. Some of them include; providing competent nursing care, care in carrying out a physician‟s orders, taking professional liability insurance.

3.2.1 Providing Competent Nursing Care

Competent practice is a major legal safeguard for nurses. Nurses need to provide care that is within the legal boundaries of their practice and within the boundaries of the agency‟s policy and procedures. You should therefore be familiar with the various job descriptions, which may be different from agency to agency. You must ensure that your education and experience are adequate to meet the responsibilities delineated in your job description.

Competency also involves care that protects clients from harm. It is important that you anticipate source of injury for the clients, educate clients about hazards, and implement measures to prevent injury. Application of the nursing process is another essential aspect of providing safe and effective client care. You must assess client‟s needs and implement intervention appropriately. All assessment and care must be documented accurately. You should approach every client with sincere concern and include the clients in discussions concerning their care. You should acknowledge when you do not know the answer to client‟s questions, tell the client you will find out the answer and ensure that you do. This way you will ensure that the client is adequately informed before he makes decisions about or give consent for his care. The following precautions are recommended to help you maintain competent practice and protect against actions that may lead to litigation.

- Function within the scope of your education, job description and areas of the Nurse Practice Act. This enables you to function within the scope of your job description and to know what is, and what is not expected.
- Follow the procedures and policies of the employing agency
- Build and maintain good rapport with clients, keeping clients informed about their diagnosis and treatment plans, giving feedback on their progress, showing concern for the outcome of their care, preventing a sense of powerlessness and a build up of hostility in the client.
- Always identify clients, particularly before initiating major interventions such as surgical or other invasive procedures or when administering medications or blood transfusion. This insures that the appropriate treatment is given to the appropriate person.
- Observe and monitor the client accurately and ensure that you communicate and record significant changes in the client‟s condition to the physician so that necessary treatment will be initiated to prevent further deterioration of the client‟s condition thus ensuring recovery.
- Promptly and accurately document all assessments, diagnosis and care given.
- Be alert when implementing nursing interventions and give each task your full attention and skill. This way you will ensure quality care.
- Perform the procedure appropriately. Negligent incidents during procedures generally relate to equipment failure, improper technique while performing procedures.
- Make sure the correct medication is given in the correct dose, by the right route at the scheduled time and to the right client.

- When delegating nursing responsibilities, make sure that the person who is delegated a task understands what to do and that the person has the required knowledge and skill. As the delegating nurse, you can be held liable for harm caused by the person to whom care was delegated.
- Protect clients from injury. Inform clients of hazards and use appropriate safety derives and measures to prevent falls, burns or other injuries.
- Report all incidents involving clients. Prompt reports enable those responsible to attend to the client‟s well being, analyse why the incidence occurred and to prevent recurrence.
- Always check any order that a client questions and ensure that verbal orders are accurate and documented appropriately. Question and confirm standing orders if you are inexperienced in a particular area.
- Know your own strengths and weaknesses. Ask for assistance and supervision in situations for which you feel inadequately prepared.
- Maintain your clinical competence. This implies continued studying including maintaining and updating clinical knowledge and skills through attending seminars and workshops.
- Keep accurate and complete records of nursing care provided to clients. This is important because client medical record is a legal document and can be produced in court as evidence. Failure to keep proper records can constitute negligence and can be the basic for tort liability. Insufficient or inaccurate assessment and documentation can hinder proper diagnosis and treatment and this can result in injury to the client. If an accident or an unusual incidence occurs, an incident report should be written. The information to be included in the report are:

    1. Name of the client and hospital number.
    2. Date, time and place of the incident.
    3. Description of the facts of the incident. Avoid any conclusions or blame. Describe the incident as you saw it even if your impressions differ from those of others.
    4. Witnesses to the incident.
    5. Any equipment and medication by name and number.
    6. Any circumstance surrounding the incident. This helps whoever is going to use the information to have a full picture and understanding of the situation.

- Report crimes, torts and unsafe practices. You may need to report nursing colleagues or other health professionals for practices that endanger the health and safety of clients. You may feel disloyal or incur the disapproval of others for reporting, however it is important to report to prevent harm that may come to the client, other colleagues and institution or may lead to litigation. The guideline for reporting a crime, tort or unsafe practice include:
- Write a clear description of the situation you believe you should report.

- Make sure your statements are accurate.
- Make sure you are credible.
- Obtain support from at least one trustworthy person before filing the report.
- Report the matter starting at the lowest possible level in the agency hierarchy.
- Assume responsibility for reporting the individual by being open about it. Sign your name to the letter or report.

See the problem through once you have reported it.

3.2.2 Care in Carrying out Physician's Order

You are expected to analyse any procedures and medications ordered by the physician and seek clarification of ambiguous or seemingly erroneous orders from prescribing physician. Clarification from any other source is unacceptable and regarded as a departure from competent nursing practice. If the order is neither ambiguous nor apparently erroneous, you are responsible for carrying it out and you must carry it out as prescribed.

There are however some categories of orders that you must question to protect yourself legally.

- **Question any order a client questions.** If a client who has been receiving an intramuscular injection tells you that the doctor changed the order from an intramuscular to an oral medication, you should recheck the order before giving the medication.
- **Question any order if the client's condition changes.** You are responsible for notifying the physician of any significant changes in the client‟s condition, whether the physician requests notification or not. For example, if a client who is receiving an intravenous infusion suddenly develops a rapid pulse, chest pain, and cough, you must notify the doctor immediately and question continuing the ordered rate of infusion. Or if a client who is receiving morphine for pain develops severe depressed respiration, you must withhold the medication and notify the doctor that prescribed the drug.
- **Question and record verbal orders to avoid mistakes.** In addition to recording the time, the date, the doctor‟s name, and the orders, you should document the circumstance that occasioned the call to the doctor. Be sure to read the orders back to the doctor, and document that he doctor confirmed the order as you read them back.
- **Question any order that is illegible, unclear, or incomplete.** This is important because misinterpretations in the name of a drug or in dose can easily occur with hand written orders and may cause some harm to the client. You are responsible for ensuring that the order is interpreted the way it was intended and that it is a safe and appropriate order.

SELF-ASSESSMENT EXERCISE

i. What is implied in the Good Samaritan Acts?
ii. What are the guidelines for nurses who choose to render care at emergency sites?

3.2.3 Professional Liability Insurance

Because of the increase in the number of lawsuits against health professionals, nurses are advised in many areas to carry their own liability insurance. Many hospitals have liability insurance that covers all employees including all nurses; however, some smaller facilities may not. Thus you should always check with your employer at the time of hiring to see what coverage the facility provides. A doctor or a hospital can be sued because of the negligent conduct of a nurse, and the nurse can also be sued and held liable for negligence or malpractice. Because hospitals have been known to countersue nurses when they have been found negligent and the hospital was required to pay, nurses are advised to provide their own insurance coverage and not rely on hospital provided insurance.

In addition, nurses often provide nursing services outside of employment – related activities such as being available for first aid at social activities or providing health screening and education at health fair. Neighbours or friends may seek advice about illnesses or treatment for themselves or family members. The nurse may be tempted to give advice. It is always advisable for the nurse to refer the friend or neighbour to the hospital. The nurse may be protected from liability under Good Samaritan Acts when nursing service is volunteered, however, if the nurse receives any compensation or if there is written or verbal agreement outlining the nurse‟s responsibility to the group, the nurse will need liability coverage to cover legal expenses in the event that the nurse is sued.

Liability insurance coverage usually defrays all costs of retaining an attorney. The insurance also covers all costs incurred by the nurse up to the face value of the policy including a settlement made out of court. In return, the insurance company may have the right to make the decision about the claim and the settlement.

Nursing faculty and nursing students are also vulnerable to law suits. In hospital-based nursing education programmes, instructors and students are often specifically covered for liability by the hospital. An instructor, however, can still be sued by a hospital in cases of negligence and malpractice. Students and lecturers of nursing employed by universities are less likely to be covered by the insurance carried by hospitals and health agencies. It is advisable for nurses in these categories to check with their institution about the insurance coverage that applies to them. In some places, hospitals do not allow nursing students to provide nursing care without liability insurance. This protects

the hospital from unnecessary expenditure in the event of a lawsuit as a result of malpractice on the part of the students.

4.0 CONCLUSION

Whatever you do in your professional practice, endeavour to remain competent so that the care you provide will be quality care that will promote the health of the client and prevent injury. This way you will protect yourself from litigation.

5.0 SUMMARY

In this unit, you have learnt that:

- There are legal protections for the nurse and they include the good Samaritan Acts and some actions that you can take to prevent litigation.
- Good Samaritan Acts are laws designed to protect health care providers who provide assistance at the scene of emergency against claim of malpractice.
- Some of the things that you do to prevent litigation are; providing competent nursing care, care in carrying out physician‟s orders and taking professional liability insurance.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss the guidelines available for nurses who choose to render care at emergency sites.

7.0 REFERENCE/FURTHER READING

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MODULE 5 ABORTION AND END OF LIFE ISSUES

Unit 1 Abortion
Unit 2 Euthanasia
Unit 3 Death and dying, values in health and illness, indigenous and non-indigenous modes of healing, the nature of illness, life and death distinction, the right to live, the right to commit suicide.

UNIT 1 ABORTION AND FOETAL EXPERIMENTATION

Unit Structure

1.1 Introduction

Abortion is defined in law as the termination of pregnancy before the 28th week of gestation. It is deemed illegal in most countries of the world including Nigeria. By extant laws, it is illegal in Nigeria even for genuine medical reasons. Abortion can be spontaneous (some missed) or induced; spontaneous abortion in law is considered an act of God and is not subject to legal prosecution. Induced abortion can be therapeutic or criminal. It is therapeutic if it is done for medical reasons and it is criminal if induced for other reasons.

Abortion was legalized for medical reasons in England in 1967 (Abortion Act 1967 , Section 1), but before 1967 the doctors in England relied on the decision of the Court in the Bourne case *(R. v Bourne [1939] 1 KB 687,* 3 All E. R. 615 (1938*)*. Mr Aleck Bourne, an eminent obstetric and gynaecological surgeon with the highest skill, faced an ethical, moral and professional dilemma, having been approached by the parents of a 14-year-old girl who became pregnant after being violently raped by soldier(s). Bourne, openly, in one of the London hospitals, without fee performed the operation of abortion. He was charged to court and tried for the crime of abortion under the Offences against the Person Act 1861, s. 58, with unlawfully procuring the abortion of the girl.

The jury were directed that it was the prosecution's responsibility in the case to prove beyond reasonable doubt that the operation was not performed in good faith for the purpose only of preserving the life of the girl. However, the surgeon did not have to wait until the patient was in peril of immediate death, but it was his duty to perform the operation if, on reasonable grounds and with adequate knowledge, he was of opinion that the probable consequence of the continuance of the pregnancy would be to make the patient a physical and mental wreck.

R v Bourne then became the first English case to decide whether an abortion could be lawful in some instances. It was established that Bourne's intention to perform the abortion was motivated by a concern to establish that mental health which he considered be as important as physical health. Macnaghten J. ruled that an abortion would be lawful if performed for the purpose of preserving the life of the pregnant woman. Dr. Bourne was discharged and acquitted by the court. Bourne's case was particularly significant because it recognised that a threat to life could include physical as well as mental health indications as illustrated by the case.

Arising from the Bourne case is what is referred to as the Bourne Principle. When there is an ethical or medical principle that is in collision with the law of the land. Doctors are advised to seek the approval of the Hospital Ethics Committee, and also to seek legal advice. The doctor should refuse to charge a fee for the procedure. The chances are high that the doctor would not be convicted in a court of law.

In Nigeria, abortion remains legal only when performed to save the life of a pregnant woman.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

- Describe the concept of abortion
- Explain the laws concerning abortion
- Analysed the consequences of illegal abortion

1.3 Nigeria's Abortion Provisions

Below are the Nigeria's abortion provisions as modified or reviewed over time:
Penal Code (Northern States) Federal Provisions Act, Chapter 345 of the Laws of the Federation of Nigeria (Revised ed. 1990), Articles 232-236 (This law applies in the northern states of Nigeria.)

Causing miscarriage
"Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for a term which may extend to fourteen years or with fine or with both".

Thus, Section 232 of the Penal Code makes provision for the exculpation of a physician who performs abortion to save the mother's life.

Death caused by act done with intent to cause miscarriage.
Whoever with intent to cause the miscarriage of a woman whether with child or not does any act which causes the death of such woman, shall be punished-

(a) with imprisonment for a term which may extend to fourteen years and shall also be liable to fine, and
(b) if the act is done without the consent of the woman, with imprisonment for life or for any less term and shall also be liable to fine.

Causing miscarriage unintentionally.
Whoever uses force to any woman and thereby unintentionally causes her to miscarry, shall be punished-

(a) with imprisonment for a term which may extend to three years or with fine or with both, and
(b) if the offender knew that the woman was with child, he shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

Act done with intent to prevent child being born alive or to cause it to die after birth.

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth and does by such act prevent that child from being born alive or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished

with imprisonment for a term which may extend to fourteen years or with fine or with both.

Causing death of quick unborn child by act amounting to culpable homicide.
Whoever does any act in such circumstances that, if he thereby caused death, he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment for life or for a less term and shall also be liable to fine.
Criminal Code Act, Chapter 77 of the Laws of the Federation of Nigeria (Revised ed. 1990), Articles 228-230, 297, 309, 328 (This law applies in the southern states of Nigeria.)

Attempts to procure abortion.
Any person who, with intent to procure miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony, and is liable to imprisonment for fourteen years.

Attempt to procure own miscarriage.
Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years.

Supplying drugs or instruments to procure abortion.
“Any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years, the offender cannot be arrested without warrant”.

Deals with surgical operations carried out with intention to preserve the mother’s life. It states:
“person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

Death by acts done at childbirth.
"when a child dies in consequence of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do such act is deemed to have killed the child.

Killing or facilitating the death of an unborn child: the possibility of opportunists killing an unborn child after the 28th week and not calling it an abortion has been dissuaded by Section 328 of the Criminal Code which provides that:
"any person who, when a woman is about to be delivered of a child prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a felony, and is liable to imprisonment for life".

Self-Assessment Exercise

1. Define abortion
2. List the extant laws that prohibits abortion in Nigeria

1.4 Summary

Abortion, the death of unborn children before stipulated weeks as per jurisdiction may be spontaneous or illegal and there are laws to define the legality or otherwise.

The laws governing abortion in Nigeria are diverse and the nurse needs to know the extant laws to avoid negative repercussions.

1.5 Reference/Further Reading/Web Resources

Olomojobi Yinka. Medical and health law, the right to health 2019
Emiri FO. Medical law and ethics in Nigeria
Dada JA. Legal Aspects of Medical Practice in Nigeria

UNIT 2 EUTHANASIA

Unit Structure

2.1 Introduction

Euthanasia is derived from the Greek Word “Eu” which means Good and “Thanatos” meaning death. Euthanasia, also known as mercy killing, is the practice of deliberately putting a patient to death as to limit the patient's suffering, particularly in persons suffering from an incurable or terminal disease. The patient in question would typically be terminally ill or experiencing great pain and suffering.

2.2 Learning Outcomes

By the end of this unit you will be able to:

- Explain the concept of euthanasia
- Describe the different types of euthanasia
- Evaluate jurisdictional differences

2.3 Euthanasia

2.3.1 Definition

Euthanasia is sometimes regarded by the law as second-degree murder, manslaughter or criminally negligent homicide.

Presently, there is no clearly defined law regarding euthanasia in Nigeria. The law on euthanasia is embedded in the penal laws of the country and therefore statutory. The human rights provisions of the 1999 Constitution (as amended) brings a constitutional dimension to the issue of euthanasia in Nigeria. Section 33 (1) states that:

"Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.
According to the criminal code, any form of killing of any person (euthanasia clearly inclusive) is unlawful unless such killing is authorized, justified or excused by law. Anything contrary to the permission by law in which the death of an individual by another occurs directly or indirectly and by any means whatsoever is tantamount to killing the other person.

The law is variable across the world, depending on the cultural orientation and values of the citizens. Voluntary euthanasia is regarded as suicide on the part of the patient who willingly consents and murder on the side of the doctor who executes the processes and procedure resulting in the patient's death. In countries where euthanasia is illegal, the punishment can be up to life imprisonment for the physician. There is no legal provision for euthanasia in most countries of the world including Nigeria. Section 311 of the Criminal Code provides that:
" a person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person"

Doctors have genuine concerns about the legality of euthanasia in some aspects of their practice, particular the management of terminal illnesses or seemingly hopeless conditions. Thus, they are vulnerable to litigations because it may be quite difficult or perhaps impossible to manage cases of terminal cancer by surgical and medical means, in which very high doses of drugs may have to be prescribed and administered to patients, with the potential side effects of causing worrisome and deleterious pathophysiological end-points without the problem of euthanasia rearing its ugly head.

The law on euthanasia varies across countries. Physicians in the Netherlands had been known to wide practise euthanasia since 1973 but it was the first country to legalise euthanasia in 2001. Euthanasia was legalised in Australia in 1995, but the law was repealed at the instance of the physicians in that country in 1997. Belgium legalised Euthanasia in 2002 but limited the procedure to competent adults and emancipated minors. In Switzerland, assisted suicide is not legal but it is only unpunishable unless a selfish motive is proven. In Oregon State in the United States of America, physician-assisted suicide has been decriminalised. In the Netherlands, Belgium and Oregon, the Law considers euthanasia and physician-assisted suicide to be part of medical

treatment. There are five ways of looking at the medico-legal principles involved in the administration of euthanasia.

In the first place, there is a method of passive euthanasia, which involves withholding/ withdrawal/omitting of recognised medical means to sustain treatment/prolong life either at the request of the patient or when prolonging life is considered futile. This is probably lawful. A doctor is normally under a duty to use reasonable means to conserve the patient's life, he is probably exempted from that duty if life has become an unbearable burden to the patient. The morality of omission in these circumstances is conceded even by Roman Catholics.

Secondly, there is the method of voluntary euthanasia known as physician assisted suicide, in which the medical professional aids patients to terminate their lives upon the patients' request (voluntary euthanasia). This involves supplying patients with drugs to commit suicide. In law, this is regarded as suicide on the part of the patient, and the HCP as an abettor of suicide is guilty of murder.

The third method is indirect or involuntary euthanasia. The patient is capable of requesting to be killed but has not done so. It involves the prescription of painkillers that may be ultimately fatal in an attempt to relieve suffering (but leads to the death of the patient), hence it is essentially the administration of a fatal injection to kill the patient. Should the patient die the doctor is regarded in law as a common criminal, because it is his hand/action that caused the patient's death. It is pertinent to state that neither the consent of the patient, the severity of his suffering nor the imminence of death from natural causes is a defence.

The fourth method is active euthanasia in which there is direct administration of a lethal substance to the patient by another party with a supposed merciful intent. There is projected false intent that the administration of the narcotic at the unusually high dose is aimed at 'killing' the pain but the main intention is to kill the patient (by the overdose, known indeed to be potentially lethal and would end up in fatality). In some circumstances the physician is faced with the dilemma of either doing nothing or killing both the pain and the patient, he chooses the latter course knowing that based on the foreknowledge of the most likely outcome, the patient is doomed to die soon whichever choice the physician makes. It is pertinent to state that the Roman Catholics are willing to accommodate this approach of treating/ending the life of patients on the principle of double effect.

The fifth method is non-voluntary euthanasia in which an incompetent and non-consenting person is killed when it is obvious that the

individual is incapable of either making or refusing the request to be killed.

Under the existing law, a physician is not required to treat life as an absolute value for which other variables are not important. The practice of medicine is not always predictable with certainty in every patient, because not very patient is the same in practice. Every surgical procedure has its associated risks such as the likelihood of the patient dying under anaesthesia, but this does not make the operation unlawful, considering the benefits of performing the procedure versus not performing the surgery. Physicians would consider many variables within the context of individual patients and would undertake the potential risk to life if the chances of improving the patient's health is sufficiently greater than acting otherwise. It may seem justifiable in some circumstances if the doctor acts in good faith to take actions to seek the immediate relief of pain versus the risk of accelerated death, which his quite aware of. A doctor who presumably acts in "good faith" may be ethico-legally covered if he was acting under a decision arrived at by eminent colleagues and has also not acted presumptuously on a standard operation policy, not truly applicable in the context of the index patient.

Self-Assessment Exercise

Define euthanasia
Differentiate between the various types of euthanasia.

2.4 Summary

Euthanasia or mercy killing remains an unlawful act in Nigeria and nurses must never get involved by any design in this inglorious act. nurses should also report any action aimed at surreptitiously ending a patient's life. life must be giving the sanctity it deserves.

Euthanasia or mercy killing has different means of consideration by which health care practitioners (HCPs) justify their actions. Nevertheless, it is an unlawful act and in fact criminal act by the extant laws of Nigeria and nurses who participate in euthanasia covertly or overtly are liable to prosecution.

2.5 Reference/Further Reading/Web Resources

Olomojobi Yinka. Medical and health law, the right to health 2019
Emiri FO. Medical law and ethics in Nigeria
Dada JA. Legal Aspects of Medical Practice in Nigeria

UNIT 3 DEATH RELATED-ISSUES

Unit Structure

3.1 Introduction

Death is the inevitable end of every mortal. Death is an end point that sets off numerous challenges either for families, groups, institutions, businesses et cetera. Death may be natural or unnatural. The fact of death may provoke legal technicalities with serious consequences for the stakeholders. When death is unnatural, the law has structures and mechanisms to investigate the circumstances of death.

3.2 Learning Outcomes

By the end of this unit you will be able to

- Describe the concept of death
- Analyse the difference between somatic and molecular death

3.1 Main Content

3.1.1 Definition

Death may be defined as complete and persistent cessation of respiration and circulation. This definition has become obsolete because of modern resuscitative techniques; thus, circulation and respiration could be maintained in individuals whose respiration and circulation has persistently ceased. It may also be defined as the cessation of life and all associated processes, the end of an organism's existence as an entity

independent from its environment and its return to an inert, non-living state. A better definition is necessary for coverage of transplant surgeons who would want to patients to be indeed dead scientifically and within appropriate legal coverage so that they could excise organs for transplant purposes. Shapiro defined death as the irreversible loss of the properties of the living matter. He made a clear distinction between properties of the whole person and those of components parts. Shapiro opined that when the properties of the whole patient are irreversibly lost, the patient is legally dead.as such, there should be no objection whatsoever considering the removal and preservation of the properties of the living matter in the component parts. It is sometimes a serious dilemma proving that a patient is dead. The only concept of death which is presently medically and legally acceptable is the concept of brain death. Brain death is defined as a condition in which all the neurons in the brain have ceased functioning. It is indeed the measure of the true death of a person and quite factual in the sense that the brain coordinates all other functions in the body.

The mechanisms and manner of death

The mechanisms of death involves the physiological derangements or biochemical disturbances that eventually culminate in death initiated by the cause which the manner of death There are five manners of death in most jurisdictions, which can be separated into three general categories: − Natural − Unnatural, which includes homicide, suicide, and accident − Undetermined; when the manner of death is undetermined, there are two or more possible competing manners of death (e.g., homicide versus suicide), and one of the possible competing manners of death may be natural.

What death means to the HCPs

For the health care practitioners including nurses, death is an irredeemable physiological cessation of the mechanisms that sustain life. Thus, the HCP tries not to give up on life or stop the process of resuscitation until there is no hope of recovery of life or ensuring life/living is possible. He must also be seen to have done this without any bias, having annexed his knowledge of the mechanisms of disease and expertise especially within the context of the patient. There must also be appropriate documentation of the steps taken to ensure the recovery of life, preservation of life and avoid unnecessary emergencies.

What death means to the family/public?

Death is no doubt an irreversible loss that leaves a great vacuum, causes pain and set back for loved ones. Death means a relationship is severely compromised or terminated. Thus, people grieve for different reasons. Therefore, death may mean for the close relations the loss of a loved

one, the loss of a breadwinner, the loss of a protector, the loss of a genuine leader and a role model, the loss of a sponsor et cetera.

The circumstances, mechanisms and manner of death

Upon the confirmation of death by a physician, the processes set in to manage the issues related to the death episode before issuing a death certificate to such as the circumstances of death, mechanisms am the mode or manner of death. Factual consideration of all the issues surrounding the death will help to determine the steps to be taken by legal authorities, either to foreclose the case or to investigate in a bid to unravel the mysteries surrounding death and apportion appropriate punitive measures in cases of crime in order to deter criminals and guarantee a safe society. Manners of death could be homicidal, that is a person killing another (patricides, matricides, infanticides) or suicidal in which an individual kills himself. A postmortem examination may help to unravel the intrigues surrounding death. In criminal proceedings, a case of homicide may be switched or stepped down to be manslaughter in the consideration of mens rea (the state of mind or mental state of the accused person at the time of the act and actus reus (a guilty act, a voluntary affirmative act or an omission (failure to act), causing a criminally proscribed outcome.

Issues about death

What it actually means to support life is the provision of the facilities that will guarantee the continual preservation of the physiological mechanisms that sustain life and keeping to universal standards as prescribed by the WHO; howbeit considering all relevant factors in a case. Thus, hospitals should be equipped within acceptable standards for their levels. Even within hospitals, wards should be appropriately equipped with qualified and specialised staff to operate equipment e,g the intensive care unit, the emergency unit, standard operating policies put in place to maintain orderliness and prevent compromising standards and thus avoid litigations. HCPs should have continued training with periodic assessment and rehearsals and have Continuing Medical Education (CME) units as a pre-requisite for their annual registration for practising license.

Self-Assessment Exercise

What is the concept of death?
What is the difference between somatic and molecular death
How pivotal is the circumstances of death?

3.4 Summary

Death is the end of all mortals but the circumstance of death may evoke postmortem investigations that cold guide in the appropriate regulation of the society.

Death is inevitable to all mortals and occurs by different means which the law has to unravel the circumstances, when death is not natural. It becomes more engaging for the law when health care professionals ae implicated in clinical negligence, medical malpractice and gross negligence slaughter. Deaths from drug overdose and suicide are also investigated by the law.

3.5 References /Further Reading/Web Resources

Olomojobi Yinka. Medical and health law, the right to health 2019
Emiri FO. Medical law and ethics in Nigeria 2012

MODULE 6 ETHICAL DILEMMA AND DECISION MAKING IN NURSING

UNIT 1 ETHICAL PROBLEMS IN NURSING

Unit Structure

1.1 Introduction

Nurses in carrying out their duties are confronted with ethical problems as a result of technological changes and knowledge explosion which have brought changes in health care. Such changes include, rising cost of health care, increase in awareness of the consumers of health care of their bodies and rights and new techniques in management of health conditions. All these have brought dramatic increase in the frequency and complexity of ethical and legal problems that face the nurse thus exposing her to conflicting loyalties and obligations. It is important that you become aware of this. This unit therefore will examine the sources and categories of ethical dilemma.

1.2 Objectives

By the end of the unit, you should be able to:

- explain the concept Ethical Dilemma
- outline the sources of Ethical Dilemma
- explain the categories of Ethical Dilemma.

1.3 Main Content

1.3.1 Ethical Dilemma

An ethical dilemma is a difficult moral problem that involves two or more mutually exclusive, morally correct courses of action. Or it can be said to be a situation of conflict over philosophies, values and professional duties such that the professional is unsure of what constitutes proper conduct as no absolute right or wrong conduct exists. In an ethical dilemma, each alternative course of action can be justified by the ways in which a person views the course of action and this is based on his or her value system. Issues in health care delivery practices present different alternatives depending on whether the issue or course of action is viewed from the patient, the health care agency, the legal system or the nurse‟s perspective. What you must bear in mind in whatever ethical situation you find yourself is the fact that according to the nursing code of ethics, your first loyalty is to the client. However, it is not always easy to determine which action best serves the client‟s needs.

Source of Ethical Problems in Nursing

Source of ethical problems in nursing include:

- Social and technological changes
- Nurse‟s conflicting loyalties and obligations.

1.3.2 Social and Technological Changes

Social changes such as right to healthcare, increasing cost of healthcare and conflicting institutional policies create ethical problems. Every individual is supposed to be entitled to healthcare but sometimes the cost of healthcare is beyond the reach of many. When such people present in health institutions where the policy states people must pay

before they can receive treatment, the nurse is faced with the dilemma of whether to observe the code of ethics of nursing which ascribed four primary responsibilities to her one of which is to alleviate the suffering of the client, or to observe the policy which states, „no pay no treatment".

Also technology creates new issues that previously did not exist. Today, with treatment that can prolong biologic life almost indefinitely, the questions are; should nurses do what they know they can? Who should be treated? Everyone or only those who have a chance to improve or survive?"

1.3.3 Conflicting Loyalties and Obligations

Because of their unique position in the healthcare system, nurses experience conflicts among their loyalties and obligations to clients, families, physicians, employing institutions and licensing bodies. Client"s needs may conflict with institutional policies, physician"s preferences, interest of colleagues or co-workers, the needs of the client"s family, or even the laws of the state. For example, if your colleague who is on duty with you in the same ward unintentionally gives a wrong dose of a drug to your client and the client reacts to the drug, you may think that the client needs to be told the truth but this might damage the client-nurse relationship and cause harm to the client rather than the intended good. On the other hand you may feel a duty to your colleague and therefore think that the client need not know. Always remember your first loyalty is to your client. What you should do is what is best for the client at the time but the problem is the determination of what is best.

Ethical problems in nursing may also arise from the interactions of the nurse. These include

- Nurse – client/family interaction Nurse – co-worker interactions
- Nurse – nurse interaction.

Other sources of ethical problems include:

- Conflicts between the nurse"s personal values and professional expectations.
- Conflicts between professional duties and institutional policy
- Conflicts between professional and societal values

Categories of Ethical Problems in Nursing Practice

The categories of ethical problems will be examined based on the sources of ethical problem.

a. Nurse – Client/family interactions – the problems or conflicts that may arise during nurse - client interaction include:

- **Parentalism –** This is a situation where you offer what you feel the client needs to survive or avoid risk but the client rejects it. For example, a Jehovah Witness client with severe hemolytic anaemia refuses blood transfusion because it is against her faith. Does preventing loss of life justify violating the clients‟ right to autonomy and thereby make it acceptable for you to act as a parent and choose an action the client does not want?

- **Deception –** A woman and her only son were involved in a road traffic accident and sustained serious injuries and were both admitted in your hospital. The son later died and the mother kept asking you about the son. If you believe the news of the son‟s death will be an added problem that may interfere with the woman‟s recovery, will that belief justify your lying to the woman that her son is alive?

- **Confidentiality –** A good friend of yours who is HIV^+ confides in you her HIV status but requests that you do not disclose the information for fear of losing her fiancé. Knowing the consequence of disclosure particularly to the fiancé, will you be justified to disclose the information to save the fiancé from being infected?

- **Allocation of Scarce Nursing Resources-** If you are alone on duty in your ward and one of your clients suddenly becomes acutely ill with severe ante partum hemorrhage; while you are attending to her, another patient begins to experience severe respiratory distress, how will you manage the situation? Which of the clients will you leave to attend to another/?

- **Conflict between Nurse's and Client's Interest –** if you have, in your ward, a patient who had been scheduled for X-ray and you have been assigned to do his dressing, you want to do the dressing before he goes for the X-ray because you want to leave work early for personal reasons, the patient opts to go for x-ray first and you leave without doing the dressing. Is your action morally justified?

b. Nurse – Nurse interactions – problem that may arise during nurse- nurse interactions include:

- **Nurse Incompetence -** If your nurse gave an injection to a child on the buttocks which resulted to injury to the Sciatic nerve and subsequent paralysis of the limb, would you notify the appropriate hospital authority or shut-up to protect your colleague?

- **Claim of Loyalty –** you are on duty with a student nurse and you left the student to hold brief while you went to another ward to chat with a friend there. While you were away one of the patients fell out of bed and sustained some injury. When you came back and the student narrated what happened in your absence and you request the student not to tell anybody that you were absent when the incidence occurred. Are you morally justified to demand such loyalty and subject the student to the dilemma of whether to tell or not to tell?

c. Nurse – co-worker interaction – The problems that may arise during nurse – co-worker interactions include:

- **Disagreements about proposed medical regimen –** you have a terminally ill client under your care and the doctor prescribes for her some costly medical treatment which you feel will not benefit the client but has been ordered by the doctor for research purposes. You will have the dilemma of whether to carry out the treatment or not.

- **Physical incompetence –** A doctor set up an IV infusion for your client that has myocardial infaction and hypoglycaemia and regulated it to run very fast. You cautioned him about overloading the heart but he did not heed your warning. Within 1 hour while the client was on the second liter, he falls into unconsciousness and died of cardiac overload. The doctor requests you to cover him arguing that the client would have died anyway because a large part of the heart was affected. This client is the husband of a close friend of yours. You will face the dilemma of whether to disclose or not to disclose.

d. Problem may arise as a result of conflict between the nurse‟s personal values and professional expectations. For example, suppose you were on duty in the accident and emergency unit and a victim of a road traffic accident was brought in. On close look, you recognize her to be the lady who was having an affair with your husband and causing a lot of problem for your family. You

will be faced with the dilemma of whether to help her recover or allow her to die and relieve you of the problem she was causing you. The question however is "professionally, do you have any moral justification not to treat her?"

e. Problem may also arise as a result of conflict between professional duties and institutional policies. For example, the hospital policy says that without admission deposit, patients should not be received for admission nor receives care. Suppose an unbooked pregnant woman comes in labour and does not have the money to pay the deposit. Apparently she had gone elsewhere but because of the complexity of her case they could not help her. You will be faced with the dilemma of whether to overlook institutional policy and perform your professional duties or neglect your professional duties and fulfill institutional policy. What will you do knowing that if the woman is not attended to, she might die and so also her baby?

Problems may also arise as a result of dilemma on euthanasia, artificial insemination by donor or surrogate mother, living will, gene cloning, right of unborn child versus the mother and many others that have not been mentioned. The question is, how would you live your ethics in these conflict situations?

Self-Assessment Exercise

i. What is implied by ethical dilemma?
ii. Outline the sources of ethical dilemma in nursing.

1.4 Summary

In your practice as a nurse, you will, in many situations, be confronted with ethical dilemmas. The way you respond in such situations will show whether you are ethical or not. One thing that will help you is to always remember that your first loyalty is to your client and whatever you do in any situation should be in the best interest of your client.

In this unit you have learnt that:

- Ethical dilemma is a situation of conflict over philosophies, values and professional duties such that the professional is unsure of what constitutes proper conduct.

- Sources of ethical problems in nursing include; social and technological changes, nurses interactions including, Nurse – nurse, nurse – client, nurse-co-worker and conflicts between the nurse‟s personal values and professional expectations, her professional duties and institutional policy and her professional and societal values.
- Categories of ethical problems include, paternalism, deception, confidentiality, allocation of scarce nursing resources, nurse‟s versus client‟s interest, nurse incompetence, claim of loyalty, disagreements about proposed medical regimen, physician‟s incompetence etc.

1.5 References/Further Reading/Web Resources

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Basavanthappa, B. T. (2004). *Fundamentals of Nursing.* New Delhi: Jaypee Brothers Medical Publishers Ltd.

Kozier, B. (2000). *Fundamentals of Nursing; Concepts Process, and Practice*, (6th ed.). New Jersey: Prentice Hall Health.

UNIT 2 ETHICAL DECISION MAKING IN NURSING

Unit Structure

2.1 Introduction

As was mentioned in the last unit, nurses are confronted with ethical dilemma in the process of carrying out their duties and are expected to make decisions on what to do in such situations. When wrong decisions are made, the clients are affected adversely but when right decisions are made, the clients benefit. It is therefore important that you make right decisions all the time. This unit will examine what ethical decision is, models for making ethical decisions and the strategies to enhance ethical decision and practice.

2.2 Objectives

By the end of this unit, you should be able to:

- define ethical decision
- explain the models for making ethical decisions
- explain the strategies to enhance ethical decision and practice.

2.3 Main Content

2.3.1 Ethical Decision

Ethical decision is a rational choice made based on universal moral principles or framework. It is based on ethical principles and codes

rather than on emotions, intention, fixed policies, or precedence. Four of the primary principles used to make ethical decisions are those of autonomy, beneficence, justice and veracity.

The principles of autonomy holds that people have the right to determine their own actions based on their values and beliefs. Autonomous decisions use adequate information and are free from coercion, reasoned and deliberate. Autonomous actions are based on autonomous decisions

Beneficence implies doing good. The principle of beneficence therefore has four components which include:

- Inflict no harm or evil (non malfeasance)
- Prevent harm and evil Remove harm and evil
- Promote good.

As a nurse, you are morally obligated to protect the patient from harm so you must make effort to safeguard the patient and public when health care and safety are affected.

In practice you will be constantly confronted with deciding whether the risk of harm outweighs the benefit of a procedure.
The principle of justice holds that a person should be treated according to what is fair, given what is due or owed. Each decision you make has its consequences, therefore you must consider all the possible consequences, good and bad, then choose the action that you believe will have the best outcome. A good decision is one that is in the client‟s best interest and at the same time preserves the integrity of all involved. As a nurse, you have ethical obligations to your clients, the agency that employed you and to your co-workers. Therefore you must weigh competing factors when making ethical decisions.

Many nursing problems requiring decision-making are not moral problems but simply questions of good nursing practice. An important first step in ethical decision making is to determine whether a moral situation exists. The following criteria may be used for the purpose.

- There must be a need to choose between alternative actions that conflict with human needs or the welfare of others.
- The choice to be made is guided by universal moral principle or framework which can be used to provide some justification for the action.
- The choice is guided by a process of weighing reasons.
- The decision must be freely and consciously chosen.
- The choice is affected by personal feelings and by the particular context of the situation.

Ethical decision making, therefore is a step–to–step process of analytical and intentional reasoning that is used in making a choice in situations of ethical problems. Information and critical thinking are basic tools to make such informed decisions.

3.2 Models for Ethical Decision-Making

Many models for ethical decision making are available some of them include, *Bioethical Decision-Making for Nurses* by J.B. Thompson and H.O. Thompson, 1985; *Preparing Students to be Moral Agents in Clinical Nursing Practice* by J. Cassells and B. Redman, 1989; *Steps of Ethical Decision Making in Nursing* by S. P. Chally and L. Loriz, , 1998.

2.3.2 Thompson and Thompson (1985) Model

The Thompson and Thompson, (1985) Model for making ethical decisions involve ten steps as follows:

1. Review the situation to determine health problems, decision needs, ethical components, and key individuals. Whatever situation you find yourself in your practice as a nurse try to determine the health problems that are inherent in that situation, what and what decisions are necessary, what are the ethical issues that must be considered in making the decision, who and who will be affected by the decision, how they will be affected and what will be the overall effect of the decision on the client.
2. Gather additional information to clarify the situation. Here you have to ask yourself if there is other information that will make the situation clearer and if there are, get them.
3. Identifying the ethical issues in the situation such as the morals, rights and values.
4. Define personal and professional moral positions. Here you try to clarify your personal values and the professional values as they apply in the present situation.
5. Identify moral positions of key individuals involved. Here you have to clarify the values of all other people that will be affected by the decision.
6. Identify value conflicts, if any. Here you will determine whether there is any conflict between your values and those of the nursing profession, or your values and those of the key people involved in the situation or between the professional values and those of the key persons, etc.

7. Determine who should make the decision. The situation and the persons who will implement the decision will determine who will make the decision.
8. Identify the range of actions with the anticipated outcomes. Here you consider the variety of options that are available and their expected consequences.
9. Decide on a course of action and carry it out. Here, based on the expected consequences of each of the range of actions, you will select the action with the best consequences and implement it.
10. Evaluate/review results of decision/action. Here you will check whether the choice you made yielded the result you expected.

Cassells and Redman (1989) Model

Cassells and Redman (1989) Model for making ethical decisions has eleven steps as follows:

1. Identify the moral aspects of nursing care. Here you will consider your moral obligations in the situation.
2. Gather relevant facts related to a moral issue. Here you check each of the moral obligations and get all the facts that are relevant in that obligation.
3. Clarify and apply personal values. Here you will review what your values, as a person, are.
4. Identify ethical theories and principles such as autonomy and justice. Here you must remember that the ultimate decision concerning what will or will not be done for the client is the prerogative of the client. It is also important to remember that the client deserves to get what is due to him/her.
5. Utilize competent interdisciplinary resources e.g. clergy, literature, family, other care givers and consultants. You must realize that although your input is important in ethical decision, in reality several people are usually involved. Therefore, you must acquire and use skills of communication and collaboration.
6. Propose alternative action. Here you have to think through to identify the options that are open to you and their consequences then suggest them.
7. Apply nursing codes of ethics to help guide actions. You must always have the nursing code of ethics in your mind while doing anything so as to ensure your actions are ethical.
8. Choose and implement resolute action. Based on all considerations, choose and implement the best of the options that will help to resolve the ethical problem.
9. Participate actively in resolving the issue. Being the professional who has the knowledge and understanding of how the issue will

be resolved, you will play the important role of guiding all the players so that the issue will be resolved successfully.

10. Apply state and federal laws governing nursing practice. You must make sure that all that is done is within the scope of nursing and that they are done according to the rules and regulations of the practice of nursing in the country and within the institution in which the care is provided.
11. Evaluate the action taken. Check to see if the action has yielded the expected result, if not try to find out what was responsible for the failure and try to rectify it.

Chally and Loriz (1998) Steps for Making Ethical Decisions

Chally and Loriz (1998) Steps for making decisions Model has six steps as follows:

1. **Clarify the ethical dilemma.** Here you describe the situation that gave rise to the problem, main people involved, their views and interest, who will make the decision, who will be affected by the decision and the ethical or moral principle that are related to the problem.
2. **Gather additional data –** All the information that are related to the problem and the moral or ethical principles must be gathered for the decision to be valid. It is also important to gather information on relevant legal, administrative and staff considerations.
3. **Identify options.** Here you should identify all possible courses of action that are open to you, their outcome and the consequences of each outcome to all the people involved as well as to the institution and/or the society as a whole.
4. **Make a decision.** Here you should check through all the options that you had considered and select the one that you consider to be the best. The best decision in ethical decision making is the one that is in the best interest of the client and at the same time preserves the integrity of all that are involved. It is guided by ethical principle and codes of the profession and the various ethical theories.
5. **Act.** Here, you should, in collaboration with all those involved, implement the decision.
6. **Evaluate –** Here you should check to see the outcome of implementing the decision. Compare the actual with the anticipated outcome and determine whether your choice of action was the best or whether another option would have been better. The result of the evaluation will determine what you do next. Be aware that in an ethical decision making some people may agree with your choice but there some who may not. Appreciate the

other views but feel satisfied that you have acted on your convictions with good reasons.

2.3.2 Strategies to Enhance Ethical Decisions And Practice

Sometimes organisational and social constraints hinder the ethical practice of nursing and create moral distress for nurses. In view of this, some strategies can be adopted to overcome these possibilities. They include:

- Become aware of your own values and the ethical aspects of nursing. This implies that you must clarify your values and you must know the aspects of nursing that are ethical.
- Be familiar with nursing code of ethics. This implies that you should not only be able to recite them but you should know what is implies in each code.
- Respect the values, opinions, and responsibilities of other health care professionals that may be different from your own. If you do, before long, you may come to know why their values and opinions are so and you may even learn from them.
- Participate in or establish ethics rounds. These rounds are similar to the traditional teaching approach for clinical rounds but differ in the sense that while the traditional clinical rounds focus on client‟s clinical diagnosis and treatment, ethics rounds focus on the ethical dimensions of client care.
- Endeavour to be knowledgeable about the activities of your institution‟s and other institutions‟ ethics committee.
- Strive for collaborative practice in which nurses function effectively in cooperation with other health care professionals.

With this type of background, you will be able to recognise a situation with ethical issues and also know how to go about to make a good ethical decision that is to the best interest of the client.

Self-Assessment Exercise

i. What is ethical decision?
ii. Outline the content for determining whether a moral issue exists in a situation?

2.4 Summary

Situation that require ethical decisions abound in nursing practice. Nurses therefore must know how to identify these situations and make

ethical decisions that are to the best interest of the client and at the same time, preserves the integrity of all involved.

In this unit you have learnt that:

Ethical decision is rational choice made based on universal moral principles or framework. Ethical decision making is a step to step process of analytical and intellectual reasoning that is used in making a choice in situations of ethical problems. Many Models for ethical decision making are available and some of them include: Thompson and Thompson, 1985 model; Cassells and Redman 1989 Model and Chally and Loriz 1998 Model. The best decision in ethical decision making is the one that is in the best interest of the client and at the same time preserves the integrity of all that are involved. To enhance ethical decisions, you need to be aware of your own values and the ethical aspects of nursing, be familiar with nursing code of ethics, respect the values, opinions and responsibilities of others, participate in or establish ethics rounds among others.

2.5 References/Further Reading/Web Resources

Kozier, B. (2000). *Fundamentals of Nursing; Concepts Process, and Practice*, (6th ed.). New Jersey: Prentice Hall Health.

Osei, (1998). Evolution and Problems of Nursing Ethics, *West Africa Journal of Nursing*, 9 (1) 15 – 20.

UNIT 3 APPLICATION OF THE CHALLY AND LORIZ MODEL IN RESOLVING ETHICAL DILEMMA

Unit Structure

3.1 Introduction

In the previous two units, we examined ethical problems in nursing, ethical decisions and the Models that can be used to guide ethical decision-making. To ensure better understanding and the likelihood of adoption of appropriate steps that will lead to good ethical decisions in clinical practice, it is important that you know how these models can be applied in situations of ethical problems. In this unit we try to illustrate the application of Chally and Loriz model in resolving an ethical dilemma.

3.2 Objectives

By the end of this unit, you should be able to:

- outline the steps in Chally and Loriz ethical decision-making process
- apply the steps in resolving an ethical dilemma.

3.1 Main Content

3.3.1 Steps in chally and loriz ethical decision-making process

There are six steps in the Model of ethical decision-making process. The steps are as follows:

- **Clarifying the ethical dilemma –** Here you try to understand the problem by identifying the situation that gave rise to the problem, the main people involved, their views and interests, the ethical or moral principles that are related to the problem and the people that will be affected by the decision.
- **Gather additional data –** Any data that has relevance to the situation must be gathered for the decision to be valid.
- **Identify options -** Here you search for possible courses of action and think through their associated outcomes and the consequences of each outcome to all the people involved as well as to the institution and/or the society.
- **Make a decision –** making a decision here implies making a choice among all the options or possible courses of action that you had considered. The choice is based on the outcome and the consequences of the outcome. The best choice is the one that is in the best interest of the client and that preserves the integrity of all that are involved. So it should be guided by ethical principles and codes of ethics of the profession.
- **Act –** implementation of the decision may not be carried out by you alone; it may involve others. You should, therefore, collaborate with all those involved to implement the decision.
- **Evaluate –** Evaluation involves checking to see the outcome of implementing the decision. You know the kind of outcome you had anticipated when you chose the particular option. In evaluating, you should compare the actual outcome with the anticipated outcome and determine whether your choice was actually the best or whether another option would have been better. The result of the evaluation will determine what you do next.

A Case that Presents Ethical Problem

Mrs. N. is a 48 years old post myomectomy client on 8hourly intramuscular genticine 80mg and 6 hourly/PRN pentatocine 2mls. During your take over round, Mrs. N complained she had not had her afternoon injection which your colleague nurse Ai who is handing over to you instantly claimed she had given. Incidentally Mrs. N had complained of pain earlier on and was given an injection. Mrs. N

maintained that she received only one injection and not two. To avoid any further argument and or embarrassment, Mrs. N was told nurse Ai will come back to clarify the issue with her after handing over. Being an ethical nurse, you decided not to ignore this complaint of Mrs. N but to pursue the matter to establish the truth and decide on an appropriate action.

Resolution of the Problem using Chally and Loriz Model

Step One: Clarify the Ethical Problem

This is a situation of moral uncertainty related to the universal moral principle of veracity or truth telling. The client‟s denial of receiving due treatment, if proven to be true, is an unethical conduct by nurse Ai , but if untrue, should be appropriately handled to salvage the reputation of nurse Ai.

Other important things to note include:

- Nurse Ai has an obligation to give Mrs. N her due treatment and so must be accountable for her actions.
- Mrs. N has the right to demand for such treatment if in any way she feels it has not been given so as to know from where to continue the care.
- Again you have the professional responsibility to protect your client against any way in which the actions of your colleague may jeopardize her well - being.
- Immediate decision and action are necessary and the decision is purely a nursing issue since it was only nurses that administered the prescribed treatment.

Step Two: Gather Additional Data

From what you know about Mrs. N, she has been a pleasant noncomplaining client. Nurse Ai is a calm, conscientious, hardworking and painstaking staff but on this day appears on edge and nervous. Mrs. N‟s prescribed drugs were fully supplied by the pharmacy department with equivalent number of syringes and needles to administer them. On examination of the Mrs. N‟s records, you found that all the administered injections were properly documented up-to-date including the last dose given by Nurse Ai. The remaining drugs correspond with the number of doses yet to be given but there was an extra syringe and needle. When you asked Nurse Ai about the extra syringe and needle, she explained that she drew the two drugs in one syringe and administered with one needle. The nurse aide who witnessed the procedure confirmed that the two drugs were given with one syringe and needle.

Although this is not the ward routine, she explained that she did so with the intent of going home with the extra syringe to treat her sick child at home.

Nurse Ai acknowledged that her actions were unethical but pleads with you to understand her situation. She said she is financially overstretched having lost her husband a few years ago and bearing the financial burden of her family alone. The situation is made worse by the fact that the hospital has not paid salaries for the past two months.

The ethical, legal and administrative implications of nurse Ai‟s actions were analysed and the following were obvious.

- Nurse Ai‟s action of mixing two drugs in one syringe may lead to drug-drug interaction which can lead to adverse effects on the client, the least of which is reducing the bio-availability of the drug to the client.
- The ethical principle of non-malfeasance has been violated.
- Nurse Ai‟s intent to take away the syringe and needle paid for by Mrs N. without her consent is not only unethical but also illegal. Morally, it violates the principle of informed consent, and she may be sued for stealing. It is a commonly held view that a nurse should place the needs of her client above all else including her own needs. This situation posed a serious problem of conflict between personal needs and commitment to the terms of contract of employment and Nurse Ai chose to meet her personal need.
- Nurse Ai‟s action exposed the hospital and the nursing profession to possible loss of public trust.

Step Three: Identify Options that are Open to You

The courses of actions that are open to you include the following:

i. Report or hand Nurse Ai over to the security staff of the hospital. This may cost her her job and her family, which is already operating under a lot of stress, will be thrown into jeopardy. This approach honours the view that nurse Ai‟s actions are evil, irrespective of the circumstances under which they occurred, and therefore deserve punishment.

ii. Cover Nurse Ai‟s action up as requested, after all no obvious harm has come to Mrs. N. Nurse Ai will go back to explain to Mrs. N but maintain her claim of having given her her due drugs and ignore any further complaints from the client. This option is an application of the principle of the “end justifies the means”

ethic. Client‟s trust may be lost and there is no guarantee that Nurse Ai will not engage in similar actions that can endanger client‟s life when faced with similar situation in future.

iii. Collect the syringe and needle from Nurse Ai, tell her to go that you will explain to Mrs. N what happened. You may even give Nurse Ai some money to enable her treat her sick child. This option may leave Mrs. N suspecting a cover-up and Nurse Ai will risk her reputation on the ward. Again, there is no guarantee that Nurse Ai will not steal in future if pressed since the circumstances of the act have not be addressed.

iv. Oblige to see the client with Nurse Ai so that she can explain to her that her treatment was given but that a wrong procedure was used, that is, drawing the two drugs together in one syringe and administering them in one injection. She can then apologise to the client for her wrong deed, and return the unused syringe and needle to her. Also counsel Nurse Ai to exercise her right as employee of the hospital by bringing her sick child to be treated in the hospital where she has the option of either paying cash for treatment or signing an undertaking for the cost of medicine to be deducted instalmentally from her salary. She also has a right to apply for salary advance to help her stabilise her financial situation.

Step Four: Make a Decision

Examining the options using both professional and general moral principles, the fourth option was adopted. This option was selected because it seems to honour the principle of justice to all parties concerned for the following reasons; the option honour:

- The client‟s right to information about her treatment. The nurse‟s personal precept of sympathy for a stressed colleague.
- The professional ethical standard of challenging the action of a colleague when it endangers a client‟s life.

Also the action will control Nurse Ai‟s unethical and illegal conduct, while at the same time give her opportunity to exercise her welfare rights.

Step Five: Implement the Action

All the actions outlined in option iv should be carried out.

Step Six: Evaluation

Mrs. N was satisfied with Nurse Ai‟s explanation. Nurse Ai brought her sick child to the children emergency unit for treatment. The doctor‟s assessment of the sick child revealed much more than Nurse Ai intended to treat at home. The child received the treatment based on the undertaking signed by Nurse Ai that the accounts department should deduct the cost of the treatment instalmentally from her salary. Nurse Ai was very grateful; she however did not apply for salary advance because salary was paid into staff accounts in the bank that day.

Self-Assessment Exercise

List the steps in Chally and Loriz ethical decision making process.

3.4 Summary

Ethical problem situations require ethical decision making process that takes into account professional and moral principles. When appropriately applied, the decision thus made will honour the principle of justice to all parties concerned.

In this unit you have learnt that:

- Chally and Loriz ethical decision making model has six steps.
- In the first step you try to understand the problem by identifying the situation that gave rise to the problem, the main people involved, their views and interests. The ethical or moral principles that one related to the problem and the people that will be affected by the decision.
- The second step involves gathering any other data that has relevance to the situation.
- The third step involves identifying possible courses of action, their associated outcomes and consequences.
- Step four involves making a choice among all the options or possible courses of action.
- Step five involves the implementation of the decision.
- Step six involves checking to see the outcome of implementing the decision.

- When appropriately applied, the decision made will honour the principle of justice to all parties concerned.

3.5 References/Further Reading/Web Resources

Anarado, A. N. (2002). *Ethics and Law in Nursing Practice.* Enugu: Snaap Press.

Chally, P. S. and Loriz, L. (1989). "Ethics in the Trenches; Decision Making in Practice: A Practical Model for Resolving the Ethical Dilemmas You Face Daily." *American Journal of Nursing.* 98(6) 17–20.

UNIT 4 APPLICATION OF CASSELLLS AND REDMAN 1989 MODEL FOR MAKING ETHICAL DECISION IN RESOLVING ETHICAL DILEMMA

Unit Structure

4.1 Introduction

In the last unit, we examined the application of Chally and Loriz 1998 ethical decision model in resolving an ethical dilemma.

In this unit, we are going to illustrate the application of Cassells and Redman 1989 Model. Whether you use Chally and Loriz or Cassells and Redman Model, the anticipated result is the same, that is, good ethical decision. It is important however that you have good understanding of the two so that you can have a choice of which to use when confronted with an ethical situation that requires ethical decision.

4.2 Objectives

By the end of this unit, you should be able to:

- outline the steps in Cassells and Redman 1989 Model for making ethical decisions
- apply the steps in resolving ethical dilemma.

4.3 Main Content

4.3.1 Steps In Cassells and Redman 1989 Model for Ethical Decision Making

Cassells and Redman Model for making ethical decisions have eleven steps as follows:

- Identify the moral aspects of nursing care.
- Gather relevant facts related to the moral issue.
- Clarify and apply personal values.
- Understand ethical theories and principles such as autonomy beneficence, justice and veracity.
- Utilise competent interdisciplinary resources such as family, clergy, other caregivers, etc.
- Propose alternative actions.
- Apply nursing codes of ethics to help guide your actions.
- Choose and implement action.
- Apply state and federal laws governing nursing practice.
- Evaluate the action taken.

A Case that Presents Ethical Problem

Mrs. Ukenzy is an 80 year – old women who was hospitalized due to pneumonia, dehydration and senile dementia. She is suffering from arthritis, wandering tendency and she has a history of falls. Intravenous infusion and drugs were prescribed for her. Concerned that Mrs. Ukenzy might pull out her IV infusion, (which was difficult to establish), wander off, or fall, and considering that they are short staffed, the staff believe it would be best to restrain her. Mrs. Ukenzy, however, repeatedly declares that she does not want to be restrained.

Resolution of the Problem Using Cassells and Redman 1989 Model for Making Ethical Decision

Step One: Identify the Moral Aspect of Nursing Care
The case presents an ethical dilemma but as the nurse responsible for Mrs. Ukenzy, you will consider your moral obligations in the situation and they include:

- You have the obligation to ensure that Mrs. Ukenzy receives the prescribed treatment.
- You have the obligation to protect Mrs. Ukenzy from harm or to safeguard her because her safety is threatened.

- You have obligation to respect Mrs. Ukenzy‟s right of freedom and choice.
- You also have the obligation to obtain informed consent before you can carry out any procedure on Mrs. Ukenzy.

The alternative actions that you can take are: to restrain or not to restrain Mrs. Ukenzy and the moral principles involved in the situation are autonomy versus beneficence. You will need to decide whether to act on the basis of beneficence and avoid the possibility of a fall or on the basis of autonomy and grant Mrs. Ukenzy her request for freedom.

Step Two: Gather Relevant Facts Related to a Moral Issue
Your course of action will depend on the additional information you gather. You check each of the moral obligations and get all the facts that are relevant in the obligation. You will need to find out if Mrs. Ukenzy is able to understand that she could harm herself by getting out of bed without assistance. Does she understand the importance of having the IV line in situ? For how long will the IV line be necessary? How does Mrs. Ukenzy‟s family feel about restraints? Are there hospital policies that relate to the situation? Are there bed rails that can be used? Are there enough staff on duty to check on Mrs. Ukenzy frequently? Is there any other thing that can be done to ensure Mr. Ukenzy‟s safety while granting her right to freedom and choice?

Step Three: Clarify and Apply Personal Values
Here you will need to review what you value as a person. You will review your values about patient‟s rights to; freedom, choice and treatment, your value about hospital policy and procedures and you will also need to clarify Mrs. Ukenzy‟s values about her treatment and the hospital policy.

Step Four: Identify the Ethical Theories and Principles that are Involved in the Situation
The ultimate decision concerning what will or will not be done for Mrs. Ukenzy is her prerogative. Again, Mrs. Ukenzy deserves to get what is due to her. For example, restraining her against her wish negates her autonomy. The principles of beneficence, non malfeasance and justice are also involved because Mrs. Ukenzy may get out of bed and fall or wander to danger. Also, if the IV is not in situ, it means that Mrs. Ukenzy will not get her prescribed fluids and IV drugs.

Step Five: Utilise Competent Interdisciplinary Resources
You remember we had said that your input is important in an ethical decision and that in reality several people are usually involved and for this reason, you must acquire and use skills of communication and collaboration. In this situation, you can discuss with Mrs. Ukenzy‟s

family and see if there is a family member or a friend who might be able to stay with Mrs. Ukenzy.

Step Six: Propose Alternative Actions
In this step, you will think through to identify the options that are open to you and their consequences and suggest them. In this situation, the possible options may include:

- Restrain Mrs. Ukenzy against her wish. The consequences of this option are:

a) The intravenous infusion will remain in situ, Mrs. Ukenzy will receive her prescribed fluids and IV drugs.
b) Mrs. Ukenzy may become upset and angry because her right to freedom and choice has not been respected.

- Concede Mrs. Ukenzy¨s request and not restrain her. The consequences include:

a) Mrs. Ukenzy, in an attempt to get out of bed may pull out her infusion and therefore may not receive the fluids that was meant to rehydrate her and will create problems of how to give her IV drugs. The needle may cause injury to her also.

b) Mrs. Ukenzy may slip and fall, and sustain injury, which may prolong her hospital stay and increase her hospital bill.
- Concede Mrs. Ukenzy‟s request not to be restrained and assign a nurse to keep constant checks on her. However, there must be enough nurses on duty for this to be possible.

- Concede Mrs. Ukenzy‟s request not to be restrained and get one of the family members or a friend to stay with Mrs. Ukenzy, while a nurse makes intermittent checks on her to ensure that no harm comes to her. For this option to be possible, there must be a family member or a friend of Mrs. Ukenzy who is willing to stay with her.

Step Seven: Apply Nursing Codes of Ethics to Help Guide the Action to be selected

Before you choose any course of action, you must have the nursing code of ethics in mind so that whatever action you carry out will be ethical. Your fundamental responsibility to Mrs. Ukenzy, according to the ICN code of nursing ethics, is to promote her health, prevent illness, restore her health and to alleviate her suffering. You are expected to respect her right as a person while doing all these. You should ask yourself how this

responsibility applies in the present situation. The answer you give will help you make an appropriate choice of action.

Step Eight: Choose and Implement Resolute Action
After due considerations, choose and implement the best of the options that will help to resolve the ethical problem. In the present case, one of the family members indicated her willingness to stay with Mrs. Ukenzy for as long as it is necessary. So the option of granting Mrs. Ukenzy‟s request not to restrain her and getting a family member to stay with her seems to be the best option. This is so because in doing so, the principles of autonomy, beneficence and justice will be assured. Autonomy because Mrs. Ukenzy will be granted her choice of freedom by not restraining her. Beneficence because the presence of someone beside her will ensure that she does not get out of bed without assistance and thus prevent injury. Justice because she will receive her due treatment of rehydration and IV drugs. You should, however, check on her intermittently to ensure that no harm comes to her. It is important that in such situations you work with family members to provide the essential care and ensure patient‟s safety.

Step Nine: Participate Actively in Resolving the Issue

Because you are the professional who has the knowledge and understanding of how the issue will be resolved, you will play the important role of giving the necessary instructions and guiding all the players so that the issue will be resolved successfully.

Step Ten: Apply State and Federal Laws Governing Nursing Practice in the Country

While implementing the chosen option, you must make sure that all the actions you will carry out are within the scope of nursing and that they are implemented according to the rules and regulations of the practice of nursing within the country and within the institution in which the care is provided. In situations where there seems to be a conflicting regulation, you must use your initiative bearing in mind that the best action are those that are to the best interest of the patient and at the same time preserve the integrity of all involved.

Step Eleven: Evaluate the Action Taken

Check to see if the action taken has yielded the expected result. The following questions can help you in evaluating the action taken.

- Did the actions fulfill your obligation to Mrs. Ukenzy?
- Did they help to promote the health of the patient, prevent ill – health, restore health and alleviate suffering?

- Did the action respect the patient‟s right of freedom to choose?
- Did they observe the principle of beneficence, that is, protection of the patient from harm or that of justice which states that the patient must receive the treatment that is due to her?

Giving the option that was selected, we can see that if implemented, it will ensure Mrs. Ukenzy‟s autonomy, and that the I.V line remains in situ and increase the probability that Mrs. Ukenzy will be rehydrated and receive her drugs. These will help to restore her health and alleviate suffering. The presence of her family member will increase the probability that she will not try to get out of bed unassisted and injure herself. The result of this is that ill-health will be prevented.

If however, the result of the evaluation shows that the actions did not yield the expected result, you should try to find out what was responsible for the failure and try to rectify it. This may involve gathering more data and looking at other options.

Self-Assessment Exercise

Outline the steps in the Cassells and Redman 1989 Model for making ethical decisions.

4.4 Summary

Decisions that are made based on sufficient information, proper analysis of the different options that are available, and consideration of the code of ethics and the choice that will be in the best interest of the patient while preserving the integrity of all involved are bound to be ethical. You are therefore encouraged to follow systematically the steps of ethical decision making in every situation of ethical dilemma so that your decisions will be ethical.

In this unit you have learnt that:

- Cassells and Redman 1989 Model for making ethical decision has eleven steps.
- In the first step, you consider the moral obligations in the ethical situation
- In the second step, you gather all information that relate to the situation and the moral obligations.
- In the third step, you clarify and apply personal values

- In the fourth step, you identify the ethical theories and principles that are involved in the situation
- In the fifth step, you work with and use interdisciplinary resources to ensure that all the options that are available to the situation are generated
- In the sixth step, you propose alternative actions and their consequences
- In the seventh step, you apply nursing codes to help guide you in selecting actions that will be taken
- In the eighth step, you choose and implement the option which you consider is in the best interest of all concerned.
- In the ninth step, you play the role of giving instructions and guiding all the players so that the issue will be resolved successfully.
- In the tenth step, you apply the state and federal laws that govern the practice of nursing to ensure that the actions to be carried out are according to the rules and regulations of nursing within the country and the institution.
- In the eleventh step, you check to see if the action taken has yielded the expected result, if not, why not? Try and rectify it.

4.5 References/Further Reading/Web Resources

Chally, P. S. & Loriz, L. (1989). Ethics in the Trenches, Decision Making in Practice: A Practical Model for resolving the Ethical Dilemmas You Face Daily, *American Journal of Nursing,* 98 (6) 17 –20.

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