Ethics in practice – your questions answered

Advice from qualified nurse, academic lawyer and Open University senior lecturer Marc Cornock on how to deal with ethical dilemmas in nursing practice, plus case studies that highlight how a human rights approach can influence your practice and improve patient outcomes.

By Marc Cornock @Academiclawyer2 and Jennifer Trueland
What do I do if police ask me to take a blood sample from an unconscious patient?

Marc Cornock writes:
The Nursing and Midwifery Council (NMC) code does not provide specific guidance for this type of situation for UK nurses, other than saying you should act within the law of the country in which you are practising. Thankfully, the law on taking blood specimens from patients incapable of giving consent is clarified in the Road Traffic Act 1988, as amended by the Police Reform Act 2002.

Under section 7A of the Road Traffic Act 1988, a police constable can request a blood sample be taken from someone incapable of consenting if the person has been, or is believed to have been, involved in an accident, and the constable believes the person is incapable of giving consent.

Police can request but not compel Ideally, the request would be made to a police doctor, but the police can request it of any health practitioner who is not involved in the care of the person. The police cannot, however, compel someone to take a blood sample.

The health practitioner who has been asked to take the sample must be satisfied that the patient lacks the necessary capacity to consent, and must take the sample themselves – they cannot delegate the task to anyone else. Also, the doctor in charge of the patient’s care must have no clinical objections to the sample being taken.

The police cannot request a sample from blood that has been taken for clinical reasons, or test any sample until the person gives their consent once they have regained competence.

The most important thing to remember is that if you are involved in someone’s clinical care you cannot participate in the obtaining of samples of their blood for non-clinical reasons. It is worth familiarising yourself with local policy on this in case such a situation should arise, and contact your employer’s legal department for advice on any specific circumstances.

Are patients allowed to read their bedside notes?

Marc Cornock writes:

Many patients and relatives believe they have a right to see any aspect of their health record on demand, including their bedside notes.

When I was in clinical practice, bedside notes were usually kept at the bottom of the patient’s bed in a Kardex containing clinical information such as observation, fluid balance and drug prescription charts and the patient care plan.

Notes kept at the bottom of a patient’s bed are part of their health record. Patients may say that as this record is about them, they own the information, but this is not the case. Health records are owned by the health and social care secretary, or the hospital or consultant if the patient is in a private care facility.

Patients are not ‘authorised’ Health records are seen as confidential information under the General Data Protection Regulation and the Data Protection Act 2018. This means they must be protected and only authorised individuals should have access to them. As patients are not authorised individuals within the meaning of the law, they do not have the right to see their own health records whenever they want – even if bedside notes are kept in sight of the patient.

What confuses things is that some health professionals share parts of a patient’s health record with them when discussing diagnosis and treatment. Some clinical areas allow patients to read their notes and only keep limited information in them, while others do not allow access; you need to know your local policy.

The reasons why access to a patient’s health record may be restricted include confidentiality, the ability to understand what is in the record, and if the health record discusses a third party. Confidentiality would not normally be breached by giving someone information about themselves, but it can be an issue if the patient would read information in their health record that could cause them harm, for example.

If a patient wants to access their health record or make a copy of it, they have to apply to do so. Generally, if they make this request while in a clinical setting, this will be arranged with a clinical member of staff present to answer any queries. If there are concerns that some of the information might be harmful to the patient, it would be removed before they access it.

The patient’s right does not extend to seeing their record any time they demand it, making copies of any part (including photographs) or altering or deleting any part of it.
Case study: Challenging unsanitary housing conditions

A district nurse was concerned about the living conditions of a man with learning disabilities. He lived in a small, single room and his shower wasn’t working, meaning he had to use just a hand towel and bowl for washing. The toilet was also close to the bed. Ensuring access to proper washing facilities should have been a high priority for his housing provider, as he often soiled himself. The man was paying for his accommodation with some assistance from a support package arranged by social services.

The nurse raised her concerns with them first but they refused to accept there was anything wrong with his living arrangements. The nurse talked to the equalities team at her local NHS trust. The trust had been working with the British Institute of Human Rights, which explained that the Human Rights Act might be relevant. It suggested that the man’s living arrangements could be infringing his human rights, specifically his right to respect for private life (Article 8) and his right not to be treated in an inhuman and degrading way (Article 3). It explained that his right to private life might be compromised by the cramped and unsanitary state of his room. The fact that he often had to spend long periods of time covered in his own faeces, with no suitable way of washing himself, also meant he was potentially experiencing inhuman and degrading treatment.

Using human rights language
With some concrete information about the man’s human rights and the local authority’s duty under the Human Rights Act to respect them, the district nurse was able to return to social services and take her concerns to the housing

Case study: Unreliable allegations against a nurse

A nurse was accused by healthcare assistants of neglect and ill treatment. She said the allegations were made maliciously, and an investigation found they were unreliable.

The nurse was interviewed by the police, and the Crown Prosecution Service decided there was insufficient evidence to take action. She resigned, but when she applied for another nursing job her Criminal Records Bureau check disclosed the allegations and she was refused employment.

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What can I do if a patient with fluctuating mental capacity refuses care?

Marc Cornock writes:
In the context of consent, mental capacity refers to a patient’s ability to participate in decision-making about their care or treatment.

If there is any doubt about a patient’s mental capacity, the patient needs to be formally assessed by someone with the appropriate skills to do so. This could be their GP – if the assessment requires someone who is familiar with the patient and their condition, for example – or a mental health specialist if there are concerns about their mental health.

If someone lacks mental capacity – for example, if they are unconscious – they would not be able to participate in making decisions about their care and treatment.

A patient deemed to have full mental capacity has the right to refuse care and treatment, even if this poses a risk to their health or well-being. This is due to self-determination, a key principle behind the law of consent. If a patient is deemed to have
Case study: Restraint and a ‘best interests’ decision

A community learning disability nurse used the Human Rights Act as a framework to help make a ‘best interests’ decision.

The nurse was supporting a woman with a learning disability who was experiencing severe pain from suspected gallstones but did not want a blood test. The nurse had to make a best interests decision about using restraint to allow the test.

The nurse said: ‘I’m uncomfortable using restraint as it has been used to control people in the past. But the Human Rights Act gave me the confidence to intervene, knowing that we were taking reasonable steps to protect the patient’s right to life and right to be free from inhumane and degrading treatment, and that we were using restrictions proportionate to the situation.’

The nurse also challenged hospital staff on their decision to exclude the woman’s family from the best interests meeting, citing her right to private and family life.

This made a difference because the service user had a close, trusting relationship with her brother and he was able to support her during the interventions, minimising the impact of restrictions on her physically and psychologically.

Source: British Institute of Human Rights
bihr.org.uk

Jennifer Trueland is a health journalist