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How to cite:

Cornock, Marc (2014). Legal principles of responsibility and accountability in professional healthcare. *Orthopaedic & Trauma Times*(23) pp. 16–18.

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Version: Accepted Manuscript

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Legal principles of responsibility and accountability
in professional healthcare

by

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Word count: 1761 excluding abstract and reference list

Abstract

Within healthcare a number of concepts are raised whenever professionalism is being discussed or considered; these are the concepts of responsibility and accountability. Indeed, most healthcare professionals will undoubtedly have these terms mentioned somewhere within their contract of employment and job specifications. Yet, the concepts are sometimes used interchangeably and they are often used inappropriately.

This article will discuss what these concepts mean and how they are related to each other, as well as how they relate to the term liability.

The article will also explore why healthcare professionals are held to be responsible, accountable and/or liable and suggest that it is professional accountability that actually allows healthcare professionals to have any degree of autonomy over their professional practice.

The article ends with consideration of the consequences and outcomes that can arise as a result of professional accountability.

Introduction

Firstly, let me say that no discussion of responsibility and accountability from a legal perspective cannot be complete without the third arm of the trident, that of liability. Therefore this article will discuss and explore all three.

In order to determine what is meant when the terms responsibility, accountability and liability are used can be quite a challenging feat as there are so many differing uses of the terms. However, at the simplest level is the general dictionary definition, the Oxford English Dictionary defines responsibility as 'a charge, trust, or duty, for which one is responsible', with responsible being defined as 'answerable, accountable; liable to be called to account' also 'capable of fulfilling an obligation or trust; reliable'; accountability is defined, 'liable to be called to account: responsible', with liability being defined as 'the condition of being liable or answerable by law' (Onions 1984). As can be seen each of the terms is defined in relation to the others so that no clear definition of each is provided.

Considering the definitions given in a healthcare orientated dictionary provides the following: responsibility as 'the state of being answerable for one's performance according to the terms of reference of the Code of Professional Conduct. It involves demonstrating commitment and trustworthiness during the performance of care through devolved authority. Nurses (whether registered or not) are responsible for their actions at all times'; and, accountability as 'the obligation of being answerable for one's own judgments and actions to an appropriate person or authority recognized as having the right to demand information and explanation, according to the terms of reference of the Code of Professional Conduct. A registered practitioner

(nurse, midwife, health visitor) is accountable for her actions as a professional at all times, on or off duty, whether engaged in current practice or not' (McFerran 1998).

This does not adequately advance our understanding as there seems to be overlap between the two terms with each having a degree of being answerable for one's action and there being no clear distinction between the two terms.

Responsibility, accountability and liability – the differences

Taking the above definitions into account it is possible to state that responsibility means to be responsible for ensuring that something is carried out whilst accountability moves beyond this to encompass the responsibility but adds a requirement that the healthcare professional provides an account of how they undertook the particular task.

Liability moves the definition forward by adding a dimension of jeopardy to the definition of accountability. In a strict legal sense once the accountable person has provided their account they have fulfilled their duty. However, if the healthcare professional is liable rather than accountable for their action then the account they provide will be judged and, if found to be wanting, there may be a penalty for the healthcare professional.

Thus the three terms may be seen to form a hierarchy with responsibility being the least onerous, moving through accountability, to liability having the most potential impact.

Professional accountability

Having provided clear definitions of the three distinct terms above, it is now time to see how they are used within the healthcare setting. Taking the Nursing and Midwifery Council as an example, it is possible to see that the terms accountability and liability are combined so that accountability is the term used when in fact it is liability that is meant. To avoid any confusion this article will use the term professional accountability for this situation. That is, it will be used to indicate the ways in which the healthcare professional is held to account for their actions, but will also include the ways in which the healthcare professional is liable; that is, how they may be sanctioned for their actions.

In its Code of Practice, the Nursing and Midwifery Council state that 'as a professional, you are personally accountable for actions and omissions in your practice, and must always be able to justify your decisions' (Nursing and Midwifery Council 2008 at page 1). Here they mean professional accountability because if the nurse were unable to provide a satisfactory account of a particular incident (satisfactory to the Nursing and Midwifery Council that is) the nurse could be answerable to a sanction from the Nursing and Midwifery Council, for instance a suspension or removal from the professional register.

Professional healthcare practice

Accountability suggests that a decision to carry out an act has been made by oneself, whereas responsibility implies that one has been requested to carry out an act by another person. The relationship between responsibility and accountability may be seen as responsibility meaning to agree to undertake a task or role, once the

task/role is accepted the HCP is responsible for its implementation but is also accountable for it. If the task was given by a senior, the health care professional is accountable to that person, for ensuring that the care is undertaken in a safe, competent and professional manner. Accepting an action means one is responsible for its undertaking, as well as being accountable for its fulfilment.

This is the situation for many healthcare workers such as healthcare assistants and students in training. Whilst they have high levels of skill for individual tasks, these tasks are given to them to perform. They are responsible for ensuring that the tasks are completed to the required standard but they are supervised by someone who has professional accountability for that task.

The healthcare professional uses the knowledge and competence they have to decide whether to undertake an action. Their knowledge base is an integral aspect of being a professional and sets the healthcare professional apart from the healthcare worker. It is the acquisition of knowledge through training and education that allows the healthcare professional to achieve the competence to become autonomous in their practice. The truly accountable practitioner is able to plan and act upon their own professional judgment. This autonomy is what sets the healthcare professional apart from the healthcare worker.

Professional accountability is one of the features of being a professional, being able to accept accountability for one's actions and being able to justify one's actions, knowing when to and when not to do something. Only a professional with appropriate knowledge can be truly accountable; this is the reason that health care

professionals remain accountable for work delegated to health care workers who are responsible for its fulfilment. In order to be truly accountable one must be able to defend one's actions. Because accountability implies a greater degree of autonomy than responsibility with regard to, for instance, decision making, there is an implied suggestion that standards are higher when undertaken by a health care professional who is professionally accountable.

Thus, professional accountability refers to the autonomous health care professional who has the knowledge, competence and authority to practice in the way that they see appropriate, according to their professional training; to act or not to act, using their own judgment to decide what treatment is necessary; the freedom to decide how best to deliver that treatment; and, the ability to justify their action or inaction based upon their knowledge and expertise.

Consequences and outcomes

As seen above, professional accountability means that the healthcare professional has a degree of autonomy in the way that they undertake their professional practice. However, together with the benefits of professional accountability, including the autonomy to make one's own clinical decisions, come obligations.

Most healthcare practice is unremarkable in that the outcome is what was planned and expected. The patient receives the treatment that they needed without any adverse event. However, every time that a healthcare professional makes a decision to treat, or not to treat, a patient they are taking a risk that their actions will

lead to an adverse event for the patient, that something may go wrong. If this is so, the healthcare professional will be professionally accountable for that adverse event.

This begs the question, to whom is the healthcare professional professionally accountable to? Working outward this would be to the patient; themselves; their colleagues; their employer; the professional regulatory body; and society. This raises another question of how can these various agencies hold the healthcare professional professionally accountable, what sanctions can they impose?

Taking each in turn:

The patient can make a complaint to a number of organisations including the healthcare professional's employer or professional regulatory body. They can also undertake legal action against the health care professional, or their employer, through the courts.

The healthcare professional has to live with the consequences of their own actions.

The healthcare professional's colleagues may feel that that do not want to work with them or that they should only work supervised and have their decisions checked before they are able to undertake clinical practice, or they may feel their standard of work warrants them being reported to their employer or professional regulatory body.

The healthcare professional's employer has the power to take disciplinary action against them, including suspending them from practice for a time, requiring them to undertake further training or ultimately dismissing them from their position.

The healthcare professional's professional regulatory body can suspend them from clinical practice, require them to undergo further or remedial training, prevent them from working in certain areas of clinical practice or permanently remove them from the professional register.

It is important to note that whilst the healthcare professional's employer may remove them from their current position, they are still able to go and try to find another similar position elsewhere. If they are permanently removed from their professional register they will no longer be able to attain any position which requires that registration.

Society can admonish the healthcare professional. This may take the form of publication of their practice through the media or through the legal system where their poor standard of professional practice can result in a criminal conviction or a civil action against them or their employer.

It is important to realise that most healthcare professionals undertake their professional accountability day in and day out without any adverse outcomes. This section has considered the consequences and outcomes of adverse events solely for the purpose of completeness in considering professional accountability in a healthcare setting.

Conclusion

This article has explored the terms responsibility, accountability and liability and noted that in healthcare practice it is professional accountability that is most usually

being referred to. We have also noted that professional accountability provides healthcare professionals with the opportunity to have autonomy over aspects of their clinical practice. Finally, we considered the variety of ways in which professional accountability can manifest itself, noting that the most severe consequences happen very rarely.

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