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A summary of law and ethics for the new health care practitioner

by

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Abstract

This article deals with the legal and ethical principles that new health care practitioners need to consider in their clinical practice. It also acts as a reminder of these principles for those who have been practising for some time.

The article will outline the key areas in health law and ethics that all health care practitioners need to consider when undertaking their clinical practice. The principles that will be discussed centred on:

- consent
- confidentiality
- clinical competence
- record-keeping and documentation and,

- revalidation, not necessarily a legal or ethical issue but as something that all newly qualified or registered health care practitioners should consider

Introduction

At this time each year, thousands of individuals will have sat their exams; completed their assessment; undertaken their final clinical placement; met their regulatory body requirements; and, thus completed the preregistration course in their chosen area of health care practice and be emerging from these studies as newly qualified health care professional entering into health care practice as registered practitioners.

During the several years of study, some of these individuals will have undertaken discrete modules in ethics, or law, or ethics and law, or professional practice related modules; whilst others will have had the same subject(s) integrated through various components of their course.

As registered and/or qualified health care practitioners, all those entering into clinical practice for the first time will be expected to practise their chosen health care field according to the code of practice issued by the relevant regulatory body for their professional area. This will require them to practise according to the law of the country in which they will be working, as well as adhering to the ethical principles that the regulatory body deems to be relevant for safe and effective health care practice.

Yet, with all the new demands on their attention as a newly health care practitioner, it can be daunting to have to consider the legal and ethical principles in addition to the clinical skills and knowledge and competence that they are expected to demonstrate in the new role. This article is offered as a brief reminder of the key legal and ethical principles that they, as newly qualified and/or registered health care practitioners, need to ensure that they address in their clinical practice. It can of course also be used by those who are not quite so newly qualified or registered as a reminder for them too.

Vital to knowing how to practise safely, effectively and according to the relevant legal and ethical principles, is knowing what these legal and ethical principles actually are. This author considers that the following are the principles that every health care practitioner needs to reflect upon and consider as they undertake their clinical practice:

- consent
- confidentiality
- clinical competence
- record-keeping and documentation and,
- revalidation

each of these legal and ethical principles will be discussed in turn. Although presented as a hierarchical list, there is no order or priority intended.

Consent

Consent is one of the most important concepts within the field of health law and one that demonstrates, through its interconnectivity, how law and ethical principles work together for the benefit of individuals. 'Consent provides the patient [and other individuals] with the right to determine what happens to their body, the ethical principle of self-determination. Without this principal, individuals would have no control over what happens to their bodies' (Cornock 2015 at page 18).

As well as providing protection for patients, through legal enforcement enshrined in both statutory and common law provisions, with regard to the ethical principle of self-determination, the legal principle of consent has two other aspects that need to be considered. The first is that 'consent is an aspect of the therapeutic relationship that exists between patient and health care practitioner' (Cornock 2015 at page 18). This means that as part of the process of obtaining consent from the patient for treatment that the health care practitioner believes to be appropriate for the patient's needs, there is a relationship established between practitioner and patient. This therapeutic relationship established the role of both participants and relies upon an exchange of information between the two participants.

The second aspect is that 'where consent has been obtained in accordance with established legal principles, the fact that there is a legally valid consent can also protect the health care practitioner from both legal action and action by their regulatory body or employer' (Cornock 2015 at page 18).

If there was one key point to take away about consent it would be that consent is not a verb, it is not something that you do; and neither is it just a check box on a list of things to be done before the patient receives treatment. Consent is not something that can be ignored nor is it something that can be assumed to have been given by the patient. Rather, consent has to be obtained from the patient for each procedure or treatment that you wish them to receive.

On many occasions this author has seen health care practitioners approach patients and tell them they are going to do something. This can be something relatively innocuous such as take-up pulse or blood pressure to something more invasive such as given the patient an intramuscular injection.

The act of obtaining consent does not have to be any more laborious or time-consuming than telling the patient you are going to take their blood pressure. Rather than simply saying 'I am just going to take your blood pressure' the health care practitioner needs to change what they are saying from being a statement to question. In this case the question would be 'is it okay if I take your blood pressure?'. The mere act of changing what is said from being a statement to a question moves the concern from the patient, either explicit or implied, from being involuntary to voluntary and therefore from invalid to legally valid.

In their seminal work on medical law Kennedy & Grubb outlines four principles that need to be addressed for consent to be obtained in a legally correct manner. These four principles require that:

- The person who provides the consent must be competent to do so;
- The person consenting must be adequately informed about the nature of the procedure or treatment;
- The person must be acting voluntarily; and
- The person must not be providing their consent under duress or undue influence.

(Kennedy & Grubb 1998 at page 111)

This means that if a competent patient, and by virtue of the Mental Capacity Act 2005 all adult patients are deemed to be competent unless it can be proved otherwise, acts voluntarily in providing their consent for a procedure about which they have been adequately informed, then their consent will be deemed to have been validly obtained, from a legal perspective.

Confidentiality

Confidentiality is another key concept for health care practice that embodies both legal and ethical principles. As Cornock notes, 'confidentiality [as a legal concept] can be said to be an obligation on one person [the health care practitioner] to uphold the privacy and security of another person's [the patient's] information' (Cornock 2011a at page 18).

There are many reasons for upholding the duty of confidentiality, not least that it is a legal requirement that you do so, and that your regulatory body's code of conduct will require you to do so. What may be a more important reason for upholding the principle of confidentiality in the health care context is the reason why the principle became both legally and ethically enshrined in health care practice. This is because, as both a legal and ethical principle and in its observation, the duty of confidentiality that is owed by health care practitioners to their patients provides a benefit not just to those patients but to society as a whole.

This benefit to society is that if the members of society are all fit and healthy they can perform their functions effectively and that society will prosper. If a section of the society is not fit or healthy then society may suffer as the role undertaken by those members of society becomes less productive or even ceases. The more members of society whose function deteriorate, the more society suffers as a whole. The part that confidentiality plays in protecting society is that if the members of society are able to seek and receive health care appropriate to their needs without their conditions and personal information being available for anyone to read, the more likely they are to actually seek the treatment they

need. By seeking the treatment the more likely they are to return to society fit and healthy to take on their role in that society. Conversely, if individuals do not have the confidence that their personal information will remain confidential, the less likely they are to seek the treatment they need.

It is for these reasons that the duty of confidentiality requires each and every health care practitioner to 'protect the information that is divulged to them by patients - or to which they have access as a result of their position - and will not pass this information on without the patient's permission or without reasonable justification' (Cornock 2011a at page 18).

How does a health care practitioner maintain the duty of confidentiality?

The duty of confidentiality owed by a health care practitioner to their patients can be summarised quite simply: don't pass on any confidential information that you have received by virtue of your role as a health care practitioner to anyone not authorised to receive that information.

The only individuals authorised to receive the confidential information are other members of the health care team treating the patient who need the information in order to treat that particular patient.

For you as a health care practitioner this means:

- only sharing confidential information with other members of the treating health care team;
- not discussing confidential information with the patient's family members without the patient's consent;
- avoiding discussing confidential information in areas where other individuals may overhear your conversation, for instance a hospital canteen or a lift; and,
- not sharing patient information with other health care practitioners if they are not part of the treating team. No matter how interesting it may be, unless you can anonymise the information so the individual patient cannot be identified.

Clinical competence

As a newly qualified and/or registered health care practitioner you will have recently had your clinical competence assessed as part of your preparation for your new role. Yet, clinical competence is a one off event. It is not something that you achieve and that is the end point. Clinical competence is something that requires an on-going process to ensure that you maintain your level of competence. If you change role you need to ensure that you have the correct competence level for that role.

There are two pieces of advice that can be offered to all health care practitioners:

- ensure that you maintain your level of clinical competence and can evidence this, and
- never ever, ever, ever work outside of your clinical competence.

Failing to maintain your clinical competence means that you will not have the necessary knowledge, skill and/or ability to undertake your clinical role. Taken in this context it is easy to see why you need to maintain your clinical competence. Being able to evidence the ways in which you have maintained your clinical competence means that should you ever be questioned about your clinical competence you will have ability to demonstrate how you have achieved this.

As to how you maintain your clinical competence, this is something that each and every health care practitioner needs to consider for themselves, as only they will know the best method that will fulfil this for them. It may be some form of continuing professional development such as a formal course; reading the latest developments in your clinical area; undertaking a shadowing placement every few years or so; attending conferences or workshops to develop your knowledge and skills; or a combination of these and other ways.

Why shouldn't a health care practitioner work outside of their clinical competence? Because 'it is part of professional accountability to know one's limitations and to be able to accept or refuse tasks and roles based upon whether one feels competent to accomplish them successfully' (Cornock 2011b at page 19). If a health care practitioner 'accept[s] a task or role for which they do not consider themselves competent then they are not exercising their professional judgement or accountability, and may fail to meet the required standard of care and patients' interests'(Cornock 2011b at page 19).

When a health care practitioner works outside of their clinical competence, or fails to maintain their clinical competence, they are failing to meet the required standard of care. This means that if their actions are ever called into question, such as a negligence action or a professional conduct hearing before one of the regulatory bodies, they will not be able to demonstrate that they acted in accordance with what was deemed acceptable at that time. This can put them in a precarious position that could result in them losing their position or their registration.

Record it

Record keeping and documentation is a vital aspect of a health care practitioner's clinical role. Without actions being documented there is no way of knowing what has been done with and for a patient, what investigations have been undertaken or treatments provided.

A health care record 'should allow the patient episode to be reconstructed entirely from the notes without the need to refer back to the healthcare practitioner and their memory of the event' (Cornock 2019 at page 34).

Health care records 'allow the health care team to provide the best possible care for the patient. It does this by providing a full account of each episode of care and treatment the patients received. By doing this it's allows health care practitioners access to be information they need in order to care for and treat the patient' (Cornock 2019 at page 35).

Failing to maintain adequate health care records mans that communication between health care practitioners treating a patient may be hampered; tests and investigations may be repeated because results are not available; patients may receive inappropriate treatment because their precious adverse reaction is not available to the treating health care practitioners; and, diagnosis and treatment may be delayed (Cornock 2019).

These are all excellent reasons for the health care practitioner to record their interaction with patient and ensure they they record their input into the patient's care and treatment. There is another reason for health care practitioners to record what they do in patient records, and this is concerned with any possible form of complaint or investigation against you and your clinical practice.

If someone were to question you during an investigation as to what you did with a particular patient on a specific day three years ago, would you be able to recall exactly what occurred? It is unlikely with recourse to the patient notes. Suppose you are asked if you had undertaken a specific treatment or investigation on that particular day. You would most likely turn to the particular day in the patient notes and check what you had entered into the record. What if your entry for that day does not mention the treatment or investigation you? How can you prove that you have done something if you have not recorded it? Quite simply you can't.

It is a truism that if something is not recorded in the patient notes then it will be deemed not to have occurred. This means that if you were required to do something for a particular patient and you haven't entered that you have done it in the notes, for all intents and purposes you did not undertake that particular investigational treatment. If this would mean that your care fell below required standard than the standard of your care would be judged so. Put simply, if it is not in the patient's records, then it is not done.

Revalidation

Although not necessarily a legal or ethical issue as the others discussed above, this is something that all newly qualified or registered health care practitioners should give some consideration to.

Many health care practitioners who are registered with one of the professional health care regulatory bodies are required to undertake revalidation periodically. This requires them to demonstrate 'how they maintain their competence and their continuing professional development in order to establish that they have the skills, knowledge and ability to practice health care' (Cornock 2016 at page 8).

At present not all health care practitioners have to undertake revalidation, however this is something that, in the opinion of this author, will be mandatory over the forthcoming years for all health care practitioners.

Revalidation is not an onerous process in itself. However, as can be imagined it requires documentation to be completed and submitted and therefore it requires the health care practitioner to be diligent in their record-keeping of their own career, achievements, competence and continuing professional development. For instance a certain number of practice hours may be required or a specific number of continuing professional development hours. If the health care practitioner is unable to demonstrate they have achieved these they would not pass their revalidation and would be required to resubmit the application with possibility that they would not be able to continue their clinical role until this was completed.

If you are subject to revalidation requirements then it is likely it will come up before you realise it. A good piece of advice is to systematically record all the elements needed for your revalidation as they occur. This means that you will not have to find, record and write the various elements required for your revalidation just before your revalidation deadline. The sooner you get into the habit of maintaining a revalidation document/folder/record the easier you will find the revalidation process.

Conclusion

Doing the above won't necessarily make you a better health care practitioner, however undertaking the principles outlined above will mean that your practice should be considered both legally and ethically appropriate. The revalidation element will just mean that you have saved yourself a lot of time and heartache when your revalidation comes around.

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