Nursing Practice in Chaotic Times: Using Our Moral and Legal Compass

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This Morning’s Overview

Ethics

Law

What Will You Do?
Ethics: Nursing’s Foundation

A student’s story, a broken promise...
Ethical vs. Practical Dilemma

**Ethical**
- Mutually exclusive
- Have to choose
- Both undesirable
- Conflict between ethical principles

**Practical**
- Mutually exclusive
- Have to choose
- Both undesirable
- Conflict between personal preferences

**Problem:** discrepancy between current situation and desired state.

**Dilemma:** Having to choose between at least two undesirable, mutually exclusive options
Quiz Q1

Does the student’s experience describe an ethical dilemma or a practical dilemma?

a) Practical

a) Ethical
Quiz Q2

Which principles and/or concepts are involved in the student’s experience?

a) autonomy, substituted judgment, moral distress

a) fidelity, double effect, informed consent

a) distributive justice, moral resilience, moral courage

a) futile treatment, conscientious objection, moral residue
History

1893: Nightingale Pledge
1896: Pre-ANA group COE
1950: ANA Code adopted
1968: 17 provisions to 10
2001: 9 provisions w/IS
2015: Revised, adopted
COE: Themes

• First Three Provisions: Duties to Patients

• Second Three Provisions: Duties to Professional Practice

• Third Three Provisions: Duties to Society
Provision 1

The nurse practices with compassion and respect for the inherent dignity, worth, and unique attributes of every person.

- 1.1 Respect for Human Dignity
- 1.2 Relationships with Patients
- 1.3 The Nature of Health
- 1.4 The Right to Self-Determination
- 1.5 Relationships with Colleagues and Others
Provision 2

The nurse’s primary commitment is to the patient, whether an individual, family, group, community or population.

- 2.1 Primacy of the Patient’s Interests
- 2.2 Conflict of Interest for Nurses
- 2.3 Collaboration
- 2.4 Professional Boundaries
Provision 3

The nurse promotes, advocates for, and protects the rights, health, and safety of the patient.

- 3.1 Protection of the Rights of Privacy and Confidentiality
- 3.2 Protection of Human Participants in Research
- 3.3 Performance Standards and Review Mechanisms
- 3.4 Professional Responsibility in Promoting a Culture of Safety
- 3.5 Protection of Patient Health and Safety by Acting on Questionable Practice
- 3.6 Patient Protection and Impaired Practice
Provision 4

The nurse has authority, accountability, and responsibility for nursing practice; makes decisions; and takes action consistent with the obligation to promote health and to provide optimal care

- 4.1 Authority, Accountability, and Responsibility
- 4.2 Accountability for Nursing Judgments, Decisions, and Actions
- 4.3 Responsibility for Nursing Judgments, Decisions, and Actions
- 4.4 Assignment and Delegation of Nursing Activities or Tasks
Provision 5

The nurse owes the same duties to self as to others, including the responsibility to promote health and safety, preserve wholeness of character and integrity, maintain competence, and continue personal and professional growth

5.1 Duties to Self and Others

5.2 Promotion of Personal Health, Safety, and Well-Being

5.3 Preservation of Wholeness of Character

5.4 Preservation of Integrity

5.5 Maintenance of Competence and Continuation of Professional Growth

5.6 Continuation of Personal Growth
Conscientious objection (CO) is a “conscience-based refusal, on moral or religious grounds, to act or participate in an action that falls within the scope of one’s practice.” (COE, 2015, p.42). Which of the following is/are consistent with the use of CO?

- a) the nurse has a deeply held moral or religious belief that the action would violate
- b) the CO would not go against a legal requirement
- c) the nurse who cites a CO and refuses to act is protected from negative consequences
- d) the nurse using a CO must make sure his/her patient is not abandoned
Provision 6

The nurse, through individual and collective effort, establishes, maintains, and improves the ethical environment of the work setting and conditions of employment that are conducive to safe, quality health care.

- 6.1 The environment and Moral Virtue
- 6.2 The Environment and Ethical Obligation
- 6.3 Responsibility for the Healthcare Environment
The nurse, in all roles and settings, advances the profession through research and scholarly inquiry, professional standards development, and the generation of both nursing and health policy.

- 7.1 Contributions Through Research and Scholarly Inquiry
- 7.2 Contributions Through Developing, Mainaining, and Implementing Professional Practice Standards
- 7.3 Contributions Through Nursing and Health Policy Development
Provision 8

The nurse collaborates with other health professionals and the public to protect human rights, promote health diplomacy, and reduce health disparities.

- 8.1 Health is a Universal Right
- 8.2 Collaboration for Health, Human Rights, Health Diplomacy
- 8.3 Obligation to Advance Health and Human Rights and Reduce Disparities
- 8.4 Collaboration for Human Rights in Complex, Extreme, or Extraordinary Practice Settings
Provision 9

The profession of nursing, collectively through its professional organizations, must articulate nursing values, maintain the integrity of the profession, and integrate principles of social justice into nursing and health policy.

- 9.1 Articulation and Assertion of Values
- 9.2 Integrity of the Profession
- 9.3 Integrating Social Justice
- 9.4 Social Justice in Nursing and Health Policy
ANA Position Statements on Ethics and Human Rights

These are the position statements from ANA regarding Ethics and Human Rights.

- Non-punitive Alcohol and Drug Treatment for Pregnant and Breast-feeding Women and the Exposed Children
- Capital Punishment and Nurses’ Participation in Capital Punishment
- Frequently Asked Questions: ANA Position on Capital Punishment
- Therapeutic Use of Marijuana and Related Cannabinoids
- Nurses’ Roles and Responsibilities in Providing Care and Support at the End of Life

http://nursingworld.org/MainMenuCategories/EthicsStandards/Resources/Ethics-Position-Statements
Recent ANA Position Statements

Capital Punishment and Nurses’ Participation in Capital Punishment

Therapeutic Use of Marijuana and Related Cannabinoids

Nurses’ Roles and Responsibilities in Providing Care and Support at the End of Life

The Nurse’s Role in Ethics and Human Rights: Protecting and Promoting Individual Worth, Dignity, and Human Rights in Practice Settings
4-Principles Framework

- Nonmaleficence
- Beneficence
- Justice
- Autonomy
Nonmaleficence: Don’t Harm

“First, do no harm.” (not really a quote from the Hippocratic Oath)

Issues
- Futile Treatment
- Aid in Dying
- Double Effect
- Research
- Withholding = Withdrawing
Beneficence: Do Good

Requires one to act in ways that benefit another. In research, implies protection from harm and discomfort, including a balance between the benefits and risks of a study.


Issues

Paternalism/Parentalism: “for your own good” - coercive

Futility

Relieving pain and suffering
Autonomy

Self-governing

“Personal autonomy encompasses self-rule that is free from both controlling interference by others and limitations that prevent meaningful choice, such as inadequate understanding.”


Issues

Consent
Research
Decisionmaking Capacity
Aid in Dying
Consent

- Competence
- Understanding
- Voluntariness
- Consent
- Disclosure
Decisionmaking Capacity

- Elements
- Proportionate to the decision that needs to be made
- Fluctuating
- Incapacitated and alone – who decides and how
Decisionmaking Capacity

- Substituted judgment
- Best interests of the patient
- Mentally ill
- Standardized assessment
"Of all the forms of inequality, injustice in health care is the most shocking and inhumane." - Martin Luther King, Jr.
Justice

A group of norms for fairly distributing benefits, risks and costs (Beauchamp & Childress, 2013)

- Distributive: fair sharing; issue: should we ration?
- Social: respect for human rights and dignity
- Restorative
- Retributive: fair punishment
- Procedural: fair process; issue: how shall we ration
Find the Distributive, Social & Procedural Justice in this quote:

The politics of scarcity demand leaders with a long term vision of a sustainable society who are able to sort through complex issues, competing interests and ideologies. In a poorly managed economic crisis, the vulnerable, with no strong political voice that can influence funding or public policy, are hit hardest. By contrast, successful solutions will shore up the safety net, protecting the weak while maintaining as much political and social stability as possible.

Jonsen’s “Four Boxes”

Medical Indications

Patient References

Quality of Life

Contextual Features
Jonsen’s 4-Box Method

Medical Indications
- PRINCIPLES: Beneficence and nonmaleficence
- Medical problem & history?
- Prognosis?
- Problem acute or chronic?
- Critical? Reversible?
- Goals of treatment?
- Chance of success?
- What if treatment fails?

Contextual Features
- PRINCIPLES: Loyalty/fidelity and justice
- Family issues?
- Clinician issues?
- Financial factors?
- Religion or culture factors?
- Resource allocation issue?
- Legal issues?
- Research factors?
- Conflicts of interest?
Jonsen’s 4-Box Method

**Patient Preferences**
- PRINCIPLE: Autonomy
- Mentally competent?
- Preferences stated?
- Informed consent given?
- Surrogate appropriate?
- Advance directive?
- Uncooperative with care?
- Patient’s rights respected?

**Quality of Life**
- PRINCIPLE: Beneficence, nonmaleficence, autonomy
- Return to normal life?
- Lingering deficits if treatment works?
- Provider biases present?
- Life possibly judged undesirable?
- Plan to forgo treatment?
- Plans for palliative care?
Principles Plus...

Caring
- Grounded in the need for, and omnipresence of relationships in the world
- Phases
  - caring about
  - taking care of
  - care-giving
  - care-receiving

Virtue
- Habits of character that predispose us to do what is right
- Not personality traits
- Obligation defines ethical duties; virtue enables us to meet those obligations.
- Flourishes in moral environments

Fowler, 2015, pp. 28-29; 102-103
Addressing Dilemmas w/ Caring & Virtue

Caring

• How does the proposed action support the care of the patient?
• What cultural/social/religious and family issues need to be considered?
• Have all necessary perspectives been considered?

Virtue

• Does the proposed action uphold the nurse’s professional integrity?
• Does the proposed action uphold honesty and transparency?
Key Concepts

Moral Distress
Moral Residue
Moral Disengagement
Moral Courage
Moral Resilience
Moral Environment
Moral Distress

Institutional, procedural, or social constraints stop nurses from doing what they know is ethically correct.

Threatens core values, moral integrity.

A second student’s story...

Moral Residue

The lingering feelings that exist after a morally distressing situation has passed. Possible consequences of moral distress and moral residue include subsequent numbness to ethically challenging situations and/or leaving the position or the profession.

Moral Disengagement: A Systems Issue

- Moral disengagement is the interaction of personal and social influences that reinforce separation of moral values and obligations from actions consistent with those values and obligations.

- Mechanisms include:
  - dehumanizing people (victims, patients, addicts)
  - displacement of responsibility (“just following orders”)
  - diffusion of responsibility (“link in the chain”)
  - distortion of consequences (“preventing greater harm”)

Bandura, A. (2002). DOI: 10.1080/0305724022014322
Moral Courage

The commitment to stand up for and act upon one’s ethical beliefs. Vital to the willingness of individuals to take hold of, and fully support, ethical responsibilities essential to professional values, who sometimes, despite adversity and personal risk, decide to act on their ethical values to help others during difficult ethical dilemmas...even when it means they may do it alone. (Murray, 2010).
Patient Protection & Moral Courage: Dan Markingson

Moral Resilience

The capacity of an individual to sustain or restore their integrity in response to moral complexity, confusion, distress, or setbacks.

Capability to discern the boundaries of integrity, including the exercise of conscientious objection.

Moral Environment

• aka ethical climate, ethical environment, moral community

• The organizational conditions and practices in which problems with ethical implications are identified, discussed, and decided.

• Embodies the character of the organization

• Can be changed to improve the practice environment.

Sauerland, J., et al. (2014)
Law & Ethics

- Aid in Dying
- Presumed Organ Donation: France; opt out vs. opt in
- Health Care Directives
- Guardianship
Aid in Dying
Aid in Dying

Washington (2009 by ballot)
Montana (2009 by court)
Vermont (2013 by legislation)
California (2015 by legislation)
DC (2016 by legislation, but US House “disapproved”)

23 states with bills or initiatives

Hawaii
Minnesota
Aid in Dying

States with AID/DWD laws generally require:

- legal adult resident of state
- terminal illness (6 months or less)
- two physicians
- two requests
- mentally competent
- waiting period
- MN: referral to hospice consultation
- self-administration of meds
<table>
<thead>
<tr>
<th>Relationship</th>
<th>Examples</th>
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<tbody>
<tr>
<td>Legal &amp; ...</td>
<td>Morally OK</td>
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<tr>
<td></td>
<td>abortion, vasectomy, circumcision, sex reassignment, required vaccination, assisted suicide, withdrawal of lifesaving treatment</td>
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<td>Not Morally OK</td>
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<td></td>
<td>abortion, vasectomy, sex reassignment, past eugenic sterilization, hemicorpectomy, assisted suicide, withdrawal of lifesaving treatment</td>
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<tr>
<td>Illegal &amp; ...</td>
<td>Morally OK</td>
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<td></td>
<td>abortion, assisted suicide, conscientious objection</td>
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<tr>
<td></td>
<td>Not Morally OK</td>
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<tr>
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<td>eugenic sterilization, assisted suicide, genital mutilation, restraints, forced feeding</td>
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</table>
Medicine is often not enough

“We understand that health is created by much more than just good medical care.”

Cover letter to MN Legislature signed by 24 MN state commissioners. *Advancing Health Equity*, Feb. 1, 2014
Need

Why doctors are prescribing legal aid for patients in need (PBS, 2015) 8:06

https://www.youtube.com/watch?v=KKVFHwjWih8

Every low income person has on average 2 – 3 health-harming legal needs = 50 million people in U.S.

1 in 6 people needs legal help to be healthy.

www.medical-legalpartnership.org
HLP Definition

Integrated, embedded lawyers and paralegals alongside health care teams to detect, address and prevent health harming social conditions for people and communities; different from usual referral.
HLPs: “Treat” Negative Social Determinants of Health

The conditions and circumstances in which people are born, grow, live, work, and age. These circumstances are shaped by a set of forces beyond the control of the individual: economics and the distribution of money, power, social policies, and politics at the global, national, state, and local levels.

WHO and CDC (adapted)
## HLP Growth in U.S.: 41 States

<table>
<thead>
<tr>
<th>Hospitals</th>
<th>Health Centers</th>
<th>Health Schools</th>
<th>Legal Aid Agencies</th>
<th>Law Schools</th>
<th>Pro Bono Partners</th>
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<td>155</td>
<td>139</td>
<td>34</td>
<td>126</td>
<td>52</td>
<td>64</td>
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Healthcare Legal Partnerships
(ELSEWHERE CALLED MEDICAL-LEGAL PARTNERSHIPS)

MLPs help patients with I-HELP® issues

- Income supports & Insurance
- Housing & utilities
- Employment & Education
- Legal status
- Personal & family stability

http://www.medical-legalpartnership.org/
<table>
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<tr>
<th>Health</th>
<th>Provider</th>
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<tbody>
<tr>
<td>91% fewer adult asthma ED visits</td>
<td>$1 million recovered in previously denied claims for cancer treatment</td>
</tr>
<tr>
<td>$2m in Social Security benefits</td>
<td>319% ROI &gt; 3 years for healthcare provider of an Illinois HLP</td>
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<tr>
<td>Better MCH outcomes</td>
<td>$4 million to pay healthcare debts</td>
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<tr>
<td>Reduced child abuse</td>
<td></td>
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<tr>
<td>Fewer missed appointments</td>
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<tr>
<td>Improved cancer treatment adherence</td>
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Minnesota HLPs

Community-University Health Care Center (CUHCC)

- Open Door Health Center & So. MN Regional Legal Services
- Northern Dental Access Center & Legal Services of NW MN
- United Family Medicine & Mitchell Hamline Law School
- CentraCare Health System & Mid-Minnesota Legal Aid (2)

Phillips Neighborhood Clinic & UM Law School

Cancer Legal Line & UM Blood and Marrow Transplant Unit

Immigration Law Center of MN & clinics in Worthington, Moorhead

People’s Health Center & private attorneys

HCMC/Whittier Clinic & Mid-Minnesota Legal Aid
Deinard Legal Clinic – An HLP Pioneer

A Partnership Between Stinson Leonard Street, LLP, & Community-University Health Care Center (CUHCC)

First U.S. Healthcare Legal Partnership, an exemplary private legal and FQHC relationship.

More than 3,000 clients from more than 56 countries. More than 102,220 hours of service. Donated over $21 million in legal services to the community. ABA Pro Bono Publico Award (2013)
The legal clinic is embedded at CUHCC, and addresses socio-economic determinants of health that affect our patients’ outcomes and quality of life.

Services include:

- Family law
- Housing
- Immigration
- Application for government benefits such as disability
Contacting a landlord and city housing inspector to help a child needing ED many times for asthma exacerbated by the unabated mold at home.

Representing a Hmong woman survivor of domestic abuse to obtain child support and legal custody of the children from her ex-spouse.

Helping a case manager for a Somali client with major mental illness, previously denied disability, to successfully appeal and receive approval for benefits.

Honoring Dr. Amos Deinard 3/24/16
Legal Aid & Hennepin County Medical Center’s (HCMC) Whittier Clinic

https://www.youtube.com/watch?v=t1tulK_LBJE

(2015. 4:07)
Assessment

National Center for Medical Legal Partnership
AT THE GEORGE WASHINGTON UNIVERSITY

Using Health Center Needs Assessments to Understand and Meet Patients’ Health-Harming Civil Legal Need

How Civil Legal Needs Affect the Health and Health Care Utilization of Health Centers
Dr. Robert Needlman, a pediatrician at MetroHealth Medical Center and Professor of Pediatrics, Case Western Reserve University School of Medicine, explains why he prefers to practice medicine with a legal aid lawyer by his side.
Building Nursing’s Ethics Leadership: Your Next Move

Modified World Cafe: Capturing Your Collective Wisdom
Has been done with > 10,000 people!
Modified World Cafe: Capturing Your Collective Wisdom

Each table has a topic. **10 topics.** 30 tables.

3 tables with each topic dispersed around room.

**6 people/table topic.** A student scribe anchors each table; does not migrate. 5 other people **migrate** every 10 minutes. **FIRST ROUND IN YOUR “TABLE-HOOD.”** Then pursue interest.

Total 3 rounds = 30ish minutes.

Final 20-30 minutes: **Scribes report** back to large group. **Each topic (n=10) should be discussed.**
Modified World Cafe Topics

1. Implementing our Code of Ethics
2. Autonomy of Mentally Impaired
3. Moral Disengagement
4. Pain & Suffering
5. Ethical Environment
6. Implicit Bias
7. Moral Resiliency
8. Futile Care
9. Moral Distress
10. Human Rights
Thank You!