Laws and Ethics in Nursing

Autonomy and Consent

Law and Ethics- a comparison

- " It would not be correct to say that every moral obligation involves a legal duty; but every duty is founded on a moral obligation" (*Rv. Instan (1893))*

Law and Ethics- a comparison

- Professional codes are influenced by laws and ethics.
- Both aim to distinguish between the acceptable and the unacceptable by reflecting public opinion.
- Forms of social control using rules, principles, and standards to prescribe behavior.
- Both share common vocabulary- rights, duties, responsibilities, justice, fairness and equity.

Law and Ethics- a comparison

- For example the Law of consent reflects ethical considerations , namely autonomy and the obligations it generates to respect the choices that people make about their own lives.
- The law of contract is also influenced by moral values, in particular the principle that people should keep their promises and perform their agreements.

Law and Ethics- a comparison

- The relationship between laws and ethics is a complex one.
- Certain ethical principles are too vague to be translated into law or the law may not be a suitable instrument to enforce a moral idea.
- *" Telling lies, for example, is widely condemned as immoral yet there are very few laws against it"*

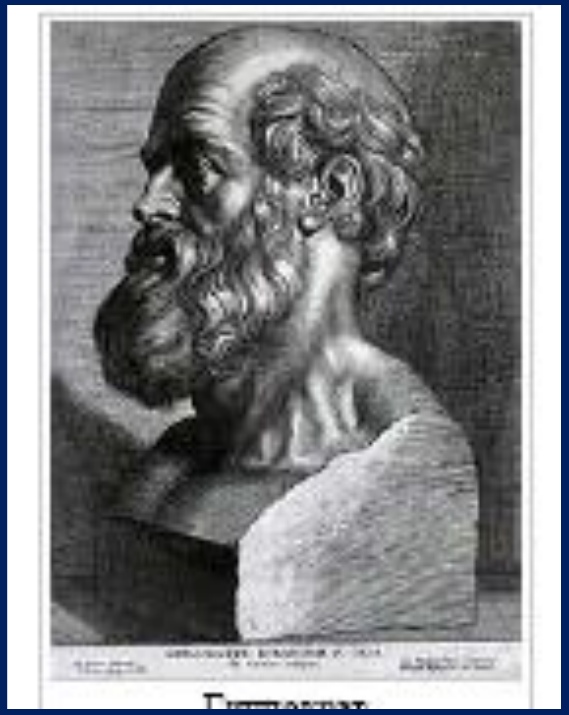
Law and Ethics- a comparison

- The law is concerned with deterring bad conduct and setting minimum standards below which practitioners must not fall, so it accepts much lower thresholds of behavior.
- *To what extent should professional practice be regulated by the law??*
- *Does the law's intrusion into the care and treatment of patients always benefits them???*

Who is responsible in decision making process - Doctor or Patient?

In the old days……

- In the **Hippocratic tradition**
- I will apply dietic measures for the benefit of the sick according to my ability and judgment;
- I will keep them from harm and injustice.



Autonomy and consent

- Respect for a person's autonomy and the right to consent to or refuse treatment are now widely accepted as central values in health care.
- This was acknowledged in 1991 in the Patient's Charter, which gave people the right to have any proposed treatment, including any risks involved in that treatment and any alternatives, clearly explained to them before they decided whether to agree to it or not.

Autonomy

- The word comes from the Greek : *autos* “self” and *nomos* “rule” “law”.
- Defined as” the capacity to think, decide, and act on the basis of such thought and decision freely and independently and without let or hindrance” (Gillon, 1985)
- Requires awareness of options and knowledge of the implications and consequences of choosing a particular course of action.

practical implications of respect for autonomy

- In health-care contexts it is now taken for granted that one of the main ways patients exercise autonomy is through the concept of consent (or informed consent).
- *Consent in the context of modern medicine is an ethical doctrine about respect for persons and about power. It seeks to transfer some power to the patient in areas affecting her self-determination, so as to create the optimal relationship between doctor and patient…namely a shared Endeavour in pursuit of the clients' interests. (Kennedy, 1991, p.178)*

Informed consent

Definition:

- Informed Consent - the consent of a patient, his/her relative or legal representative on the conduct of necessary for the patient medical intervention after explaining the risk to his/her health and life related to that intervention.

Informed consent

- In the contemporary bioethics rule of ‘informed consent’ is originated from the principle of respect of patient/individual autonomy.
  And vice versa principle of autonomy is reflected in the informed consent rule.
- Patient’s Autonomy - the patient’s right to decide independently all issues related to providing him/her a medical care.

Term ‘informed consent’ first appeared 10 years after Nuremberg process and was developed by the 1972

- To protect patients against unfair and irresponsible actions from the specialist.
- To provide them minimal health risks, social and psychological welfare, respect of moral values during bio-medical experiments and medical manipulations.

3 reasons to apply informed consent

According to bioethics classic authors Beauchamp, Childress in medical practice and in bio-medical experiments there are 3 reasons to apply informed consent

1. To provide respectful attitude towards patient or person involved in bio-medical experiment, as to the autonomous individual, who has right of liberal choice, to hold control of all procedures and manipulations, which are performed on his body during treatment or medical trails.
2. To minimize chance of moral and economic impact, which may be caused by dishonest treatment or experimentation.
3. To facilitate rise of awareness about responsibilities of doctors and researchers to protect moral and physical well-being of patients.

Informed consent

- Opposite to the formerly practiced method of paternalism changing attitude towards understanding of human rights in the context of their autonomy, means that patients are considered as a partner and co-author of all decisions taken or more precisely suggested by the doctor.
- Maintenance of this principle requires from the doctor to deliver thorough information to the patient before the starting of treatment. Information concerning patient's health condition, possible outcomes, prognosis, explanation of possible risks, warning about unfavorable results, offer of real alternative treatment, also to permit right to change own decision .

Constituent elements of Informed consent

- I Pre-requisite elements:

1. Competence or ability to understand and making decision;
2. Self-dependence (in the process of decision making).

- II Information elements:

3. Procedure of delivering important information;
4. Offering recommendations (action plans)

- III Consent element:

5. Making decision (according of certain plan);
6. Authorization (certain plan).

In those cases while medical intervention, or clinical trial bears certain risk for patient's health or life only one action is optimal - written informed consent

In other cases while serious risk is not anticipated, it is preferable for patient to transfer information in verbal form during conversation

- Written consent is mandatory in following states:

1) All surgical operations, except minor manipulations;
2) Abortion
3) Surgical contraception – sterilization
4) Catheterization of main blood vessel
5) Hemo-dialysis and peritoneal dialysis
6) In vitro fertilization
7) Genetic testing
8) Gene therapy
9) Radiation therapy
10) Chemotherapy
11) In that cases while medical service provider considers to accept written consent
12) Also informed written consent is necessary to accept from the legal representative of incapacitated patient.

Informed consent

- Informed consent should always be specific: to the individual patient, the clinical situation, and the recommended plan of care or recommended treatment or procedure.

Consent for multiple treatments

- When the plan of care for a given diagnosis involves repeated treatments or procedures-practitioners do not need to obtain consent for each individual episode.

Blanket consent

- Informed consent for a planned course of multiple repeated treatments based on a specific diagnosis is very different from practices sometimes referred to as “routine” or “blanket” consent. Asking a patient to agree at the outset of care to “any treatment your doctors think is necessary” or “routine procedures as needed” is ethically problematic.

Refusing treatment

- The right to refuse unwanted treatment , even potentially life saving treatment is central to health care ethics.
- How should practitioners respond when a patient declines intervention that practitioners believe is appropriate and needed?
- depends on the patients decision making capacity and the particular circumstances of the treatment decision.

Persons who are unable to give consent

- Whether minors are obliged to obey without expression of their consent it is morally unfavorable action. Nevertheless they will be involved in the decision making process to the fullest extent which their capacity allows.

Persons who are unable to give consent

- ‘Sometimes while legal representatives refuses to give consent and physician or other provider is of the opinion that the intervention is in the interest of the patient, then the decision must be refereed to a court or some form of arbitration’.

A decision on the medical intervention during the emergency and dangerous for life conditions of incapacitated patients is made only with taking into account the patient's interests.

Autonomy and consent

- Case study (Bella's Treatment)
- Bella is in her early thirties and has two young children. Recently, breast cancer from which her mother and eldest sister both died-was diagnosed but Bella has refused all treatment even though she knows that she will die very soon without it. Carla, a nurse, is very upset by Bella's decision, believing that treatment is her only hope, if not of a cure then at least of several more years of life. She wonders whether Bella can be forced to have treatment against her will or if there is any reason to ignore her wishes.

Autonomy and consent

- Case study (John's consent)
- John is in his late fifties and has suffered for many years from a chronic condition. Until few weeks ago he was cared for by his partner, James, but following his death his condition has deteriorated very quickly. John is particularly worried about the tests his GP has recommended, especially some blood tests. Once in hospital few details of the tests are explained to John other than in very broad terms. This is because Alison, the doctor, is very busy but also because John has said several times that he wants to leave all the decisions to the 'professionals'. Eileen, a nurse in whom John has confided, realizes that John is confused about the tests and is convinced that he has only reluctantly agreed to them for fear of upsetting Alison. She also thinks that part of his anxiety stems from his assumption that he is going to be tested for AIDS.
- Is John's consent 'real'? Does respecting his autonomy mean respecting his choice not to participate? has he been given enough information about the tests or has it been justifiably withheld?

Autonomy and consent

- Case study (Helen's autonomy)
- Helen, a 15-year-old girl was perfectly fit and well until about 3 months ago. Then she suddenly developed heart failure and has only 1 week to live. Her parents have consented for her to have a heart transplant but, on learning that her only chance of survival is the operation, Helen has refused her consent. Her reasoning appears to be logical in that she has told those treating her that she knows death is final and that she cannot change her mind. However, she is insistent that she would rather die than have the transplant and someone else's heart. As she says ' I would rather die with 15 years of my own heart.' All the adults involved want Helen to have the opportunity to live by undergoing the heart transplant except Miriam, a nurse who thinks Helen's autonomy should be respected.
- *Should Helen's wishes prevail??*