Lesson Five
Ethical and Legal Issues in Canadian Healthcare

Introduction

Being a health care professional means having an ethical contract with clients and other members of the health care team. This requires a high standard of ethical behaviour and a commitment to professional practice. It is important for health care professionals to have a sound knowledge base in ethical responsibilities. Health care professionals must also ensure that they examine legal guidelines and responsibilities for their profession.

Learning Outcomes

1. Explore the Code of Ethics related to your profession.
2. Describe how to manage an ethical dilemma.
3. Explore the concept of professional boundaries.
4. Recognize ways to help with improving ethical practice.
5. Explain the sources of Canadian law.
6. Explore Federal and Provincial legislation which relates to your health profession.
7. Develop an understanding of examples of intentional and unintentional torts.
8. Recognize aspects required for an informed consent.
9. Explore the concepts of confidentiality and privacy as they relate to health care.
10. Describe strategies for avoiding legal problems.
Ethical Aspects in Health Care

Health care professionals are accountable to clients and other health care team members. Clients' rights need to be respected and clients must be helped to achieve wellness, when possible. In addition, health care professionals must work together respecting other team members' expertise and scopes of practice. Part of working in health care involves ethical aspects and ethics involves looking at values. Values are the beliefs which individuals identify as being important to them and help guide actions and decisions.

Ethical Principles

Ethical principles lend themselves well to health care and many aspects of these principles are seen in Codes of Ethics for health care professionals. These principles are:

**Autonomy**

This principle refers to the right of individuals to make their own choices and means showing respect for others. Health care professionals need to honour what clients choose, knowing that these choices are informed.

**Nonmaleficence**

The duty to do no harm is the basis of this principle. Sometimes treatments do cause pain or discomfort, but failing to carry out certain treatments or procedures could cause more harm.

**Beneficence**

Health care professionals have a duty to use actions that will benefit clients. There is an obligation to do good.

**Justice**

This principle refers to fairness and in health care, issues can arise when deciding how scarce resources are to be used.¹

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**Code of Ethics**

In discussing ethics, a critical document to look at for each profession is the Code of Ethics. In this section a brief overview will be provided in relation to Codes from several health professions in Canada.

**Code of Ethics for Licensed Practical Nurses in Canada**

**Purpose:**

- To guide ethical reflections and decision-making across all areas of practice
- To inform the public about the ethical values and responsibilities of the profession and to explain the commitment of the profession to society

**Principles:**

- Responsibility to the Public
- Responsibility to Clients
- Responsibility to the Profession
- Responsibility to Colleagues
- Responsibility to Oneself

Licensed practical nurses use this code along with their standards, competencies, workplace policies and legal requirements that guide practice and behaviour.

**Canadian Medical Association Code of Ethics**

**Purpose:**

- Is an ethical guide for physicians
- Provides a focus on the core activities of medicine, such as health promotion, advocacy, disease prevention, diagnoses, treatment, rehabilitation, palliation, education and research
- Is based on principles and values of medical ethics such as compassion, beneficence, non-maleficence, respect for persons, justice and accountability
- Provides a common ethical framework for Canadian physicians, along with Canadian Medical Association policies

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Principles:

- Fundamental Responsibilities
- Responsibilities to the Patient
  - General Responsibilities
  - Initiating and Dissolving a Patient-Physician Relationship
  - Communication, Decision Making and Consent
  - Privacy and Confidentiality
  - Research
- Responsibilities to Society
- Responsibilities to the Profession
- Responsibilities to Oneself

**Code of Ethics for Registered Nurses**

Purpose:

- Provides guidance for ethical relationships, responsibilities, behaviours and decision-making
- To be used in conjunction with professional standards, laws and regulations that guide practice
- Serves as a means of self-evaluation and self-reflection for ethical nursing practice
- Provides a basis for feedback and peer review
- Serves as an ethical basis from which nurses can advocate for quality work environments that support the delivery of safe, compassionate, competent and ethical care
- Informs other health care professionals and the public about the ethical commitments of nurses and the responsibilities nurses accept as being part of a self-regulating profession

Primary Values:

- Promoting safe, compassionate, competent and ethical care
- Promoting health and well-being
- Promoting and respecting informed decision-making
- Preserving dignity
- Maintaining privacy and confidentiality
- Promoting justice
- Being accountable

**Pharmacists** in the Maritime provinces each have a separate Code of Ethics which is available on their respective provincial regulatory body web site.

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Managing an Ethical Dilemma

An ethical dilemma occurs when there is a conflict between two sets of values. Both are deemed good, but neither can be fully upheld in the situation. Ethical dilemmas can cause stress for health care professionals, clients and families. It may be difficult to figure out what should be done. For each situation, the issue must be examined. Knowledge and experience is used to guide actions. Critical thinking skills must be used to make a logical decision. The following ethical decision-making framework will help to manage ethical dilemmas.5

1. **Decide if the issue is an ethical dilemma.**
   - Review your clinical knowledge, policies, procedures and standards of care. This review may show that legally you are obliged to decide on an action, regardless of what you think personally.

2. **Collect all important information.**
   - Information to help resolve a dilemma may come from unlikely sources, so it is important to collect as much information as possible. Such information could include lab results, test results, client assessment data, current literature, client psychosocial concerns; as well as religious, cultural and family concerns.

3. **Explore your own values related to the issues.**
   - All participants should reflect on their values. Exploring values helps to focus on the different values that individuals may have in relation to the situation. Form your own opinion and respect the opinions of others.

4. **Verbalize the problem.**
   - When all information has been gathered and reviewed, the problem can be accurately identified. When everyone involved agrees on the statement of the problem, discussion can continue.

5. **Consider the possible courses of action.**
   - Look at what options are available related to the situation and to the client's values.

6. **Think about possible outcomes.**
   - This is the most important step. All points of view are explored and all issues are identified. It is hoped that a course of action is reached that is acceptable to all, however not everyone may be pleased with the outcome.

7. **Evaluate the action and outcome.**
   - By evaluating the action and outcome, it can help to improve skills in resolving ethical dilemmas.

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Questions in a Difficult Situation

When you are faced with a difficult situation and you are not sure about what action to take, think about your answers to these questions:

- Is it honest?
- Is it ethical?
- Would this action reflect good character?
- Is this action based on sound moral values?
- How would my reputation be affected if I do this?
- Would other people lose their trust in me?
- What affect would my actions have on others?
- Would I be respected for the decision I made?
- What is my conscience telling me to do?
- What would a professional person do in such a situation?  

Examples of Ethical Dilemmas

Within our Canadian society there are a number of issues that are frequently discussed in relation to the ethics involved. Examples of topics that you will see addressed in our culture are:

- euthanasia
- withdrawal of life-sustaining measures, such as feeding tubes and ventilators
- do-not-resuscitate orders
- palliative care
- organ transplantation
- limited finances and resources in health care
- abortion
- genetic testing
- medical marijuana

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Professional Boundaries

Definitions

Professional Boundaries:

Lines which separate therapeutic behaviour of a professional from behaviour which, whether well intentioned or not, could take away from achieving health outcomes for clients.

Boundary Crossing:

An action or behaviour that deviates from an established boundary in a relationship between a health care professional and a client. Such actions/behaviours may be acceptable in situations where the therapeutic needs of a client are being met. However, even when the action/behaviour seems to be appropriate, it is not acceptable when there are benefits to the health care professional at the expense of the client.

Boundary Violation:

Actions or behaviours by a health care professional that use a relationship with a client to meet a personal need of the health care professional at the expense of a client. Boundary violations may refer to a reversal of roles, secrecy and a situation known as a double bind. A double-bind situation is one in which the well-being of a client would be compromised whether the relationship with a health care professional is continued or not. Examples of boundary violations include:

- receiving money from a client
- having a romantic or sexual relationship with a current client
- providing too much information about own personal life
- borrowing money from a client

Health care professionals are responsible for maintaining professional boundaries. Therefore, it is important for health care professionals to be aware of signs that professional boundaries are at a risk of being crossed or have already been crossed. As a health care professional is it critical to know how to deal with boundary issues.

Another document provides an overview of warning signs about crossing boundaries. Examples include:

- spending extra time with a client which goes beyond therapeutic needs
- believing that other health care professionals do not understand a particular client as well as you do

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dressing differently when you know you are going to see a specific client
• thinking often about a client when away from work
• becoming defensive when someone else questions your interactions with a client
• spending off-duty time with a client or client’s significant other
• keeping secrets with a client apart from the health team
• giving a home phone number or home email address to a client
• adding a client as a friend on a social networking site

Information is available on web sites of the various regulatory bodies in reference to professional boundaries. An example is documents regarding sexual violations between physicians and clients that can be found on the web sites of the College of Physicians and Surgeons of New Brunswick, the College of Physicians and Surgeons of Nova Scotia and the College of Physicians and Surgeons of Prince Edward Island.

Improving Ethical Practice

Decisions about a client’s care are made by everyone on the health care team, not just one team member. Several individuals are usually involved in making any ethical decisions. Because of this process, important skills for health care professionals include collaboration, communication and compromise. Good decision-making skills in ethical situations require reflection and practice. Several ways to assist with improving ethical practice include:

- Become aware of your own values.
- Become aware of the ethical aspects related to your profession.
- Know the Code of Ethics in your profession to help guide your practice.
- Learn about and respect the values, opinions and responsibilities of other health care professionals.
- Work in collaborative practice with clients and other health care professionals.
- Understand the ethical basis of practice.
- Explore and reflect on the ethical aspects of each client encounter.

Activity 1: Ethical Aspects

1. Review the Code of Ethics for your profession. Please refer to your program overview for the website for your provincial regulatory body.
   ➢ Which ethical principles are reflected in the Code?

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2. Describe how the Code of Ethics for your profession assists you as a health care professional.

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3. Describe one example pertaining to one of the principles in your professions Code of Ethics that you have applied in practice as a health care professional or could apply.

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4. Describe an ethical dilemma you faced as a health care professional in past practice. How was the dilemma resolved?

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5. a.) What has prepared you the most in dealing with complex ethical issues in your practice as a health care professional?

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b.) What would help you to feel better prepared to deal with complex ethical issues?

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6. Search for the Code of Ethics for a health profession, other than your own profession, in the province where you are living.
   ➢ How are the two Codes the same?

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How are the two Codes different?


7. Based on the information discussed about ethical aspects in this unit, are there any concepts presented that were different in relation to your previous education or experience as a health care professional? If yes, which ones?


Legal Aspects in Health Care

Sources of Canadian Laws

Public Law - laws dealing with relations between individuals and the state or society in general. Examples are tax law and criminal law. Public law is managed in the same way across Canada.

Private Law - laws that refer to disputes between individuals and aspects such as wills, marriage and divorce. However, two systems in Canada address private law:

- Civil Law - is used in Quebec and is based on Roman law
- Common Law - is used in the remainder of Canada and is based on British common law

Statute Law - laws developed by the Canadian Parliament and provincial/territorial legislatures. Federal statutes apply across Canada, whereas provincial/territorial statutes apply only to the province or territory where they were made.\(^1\)

Legislation for Health Care Professionals

As health care professionals in the process of obtaining licensure to practice in Canada, it is important to be aware of the various Provincial Acts and their content that directly affect your profession. Each regulatory body web site contains the Acts specific to the profession. The following table provides a few examples of Acts available on the regulatory body web sites.

<table>
<thead>
<tr>
<th>Regulatory Body</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nurses Association of New Brunswick</td>
<td>Nurses Act (2002)</td>
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<tr>
<td>College of Physicians and Surgeons of New Brunswick</td>
<td>Medical Act (1981)</td>
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<tr>
<td></td>
<td>Personal Health Information and Access Act (2009)</td>
</tr>
<tr>
<td>Association of New Brunswick Licensed Practical Nurses</td>
<td>Licensed Practical Nurses Act (2002)</td>
</tr>
<tr>
<td>New Brunswick College of Pharmacists</td>
<td>Pharmacy Act (2014)</td>
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<td></td>
<td>Regulations (2014)</td>
</tr>
<tr>
<td>College of Registered Nurses of Nova Scotia</td>
<td>Registered Nurses Act (2006)</td>
</tr>
<tr>
<td></td>
<td>Adult Protection Act (2014)</td>
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<td></td>
<td>Hospitals Act (2014)</td>
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<td>Licensed Practical Nurses Regulations (2009)</td>
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<tr>
<td>Licensed Practical Nurses Association of Prince Edward Island</td>
<td>Licensed Practical Nurses Act (2009)</td>
</tr>
<tr>
<td>Prince Edward Island College of Pharmacists</td>
<td>Prince Edward Island Pharmacy Act (2014)</td>
</tr>
<tr>
<td></td>
<td>Regulated Health Professions Act (2014)</td>
</tr>
</tbody>
</table>

In addition to Provincial legislation, there are Federal laws which affect health care professionals. Examples are as follows:

- Food and Drugs Act (1985)
- Food and Drug Regulations (2014)
- Narcotic Control Regulations (2014)

**Torts**

A tort is a civil wrong committed against a person or property. Torts are identified as being intentional or unintentional.\(^1\)

**Intentional Torts**

- **Assault** - an attempt or threat to touch another individual without being justified. This could be a physical or verbal threat. An example of assault is when a health care professional threatens a client with an injection even though the client refused.

- **Battery** - physical contact with an individual without the individual's consent. If a health care professional actually administers an injection to a client without the client's consent, it is called battery.

- **Invasion of Privacy** - protection of the right of the individual to be free from anyone intruding into his or her private affairs. There are times when it is justified to breach confidentiality, such as in cases of child abuse, elder abuse, gunshot wounds or authorization by a court order.

- **False Imprisonment** - protection of an individual's basic rights. An example of false imprisonment is when a client is restrained when it is not appropriate.

**Unintentional Torts**

- **Negligence** - conduct that does not meet a standard of care which is established by law.

Four elements must be present in a case of negligence:

- A duty is owed to the client
- The duty was not carried out
- The client was injured
- Failure to carry out the duty caused the injury

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Examples of Negligent Acts:

- Medication errors that cause an injury
- Errors in sponge or needle counts in surgeries
- Failure to assess a client's condition appropriately
- Failure to let a physician know a significant change in the status of a client

Consent

Informed Consent

Informed consent means that the client has made the decision to have a medical treatment or procedure done, based on full disclosure of the risks and benefits of the action, inaction and any alternatives. The information must be given in a manner that facilitates the client's understanding of what is involved. An important point to bring forth is that as nurses do not perform surgery or direct medical procedures, it is not their responsibility to obtain consent in these situations. It is the physician's responsibility. A nurse may witness the consent and sign the consent form as a witness. This means that the nurse agrees that the client willingly gave consent, that it is the client's signature on the consent form and that the client is competent to give consent. If a nurse believes that the consent is not informed, that the client did not understand the procedure, risks and alternative outcomes, the nurse must notify the physician or his/her supervisor.\(^\text{13}\)

Conditions required for an informed consent:\(^\text{14}\)

1. Consent must be provided voluntarily. There cannot be any pressure from another individual to obtain the consent.
2. The client must be fully informed of all risks involved in a procedure, along with its benefits. It is important that the client understands the treatment and benefits.
3. The consent must be specific with regard to the proposed procedure or treatment.
4. The health care professional performing the procedure or treatment must be specified.
5. The client must have the legal capacity to consent. A minor may not be legally qualified.
6. The client must have the mental capacity to consent.

Several points to consider to ensure respect for clients' autonomy and the right to informed consent are:

- provide an environment that is suitable for interacting with clients by thinking about privacy and comfort
- understand that some clients may need more time than others to reflect on the information they are receiving


ensure that clients understand the information they are given. Ask clients questions about they have understood, have them explain to you what they understood, and encourage any questions from clients and their families.

be aware that clients may have had limited contact with health care professionals in the past

provide additional material along with verbal information. This could include using pictures or videos.

discuss with clients if they would like to have family members or friends present to provide support to them

be aware of cultural and language issues

listen carefully and assess how clients are responding emotionally to the situation

The two types of consent are known as "expressed" and "implied." "Expressed" consent is a statement of consent from the client, such as "it is OK to do it." However, as health care professionals, it is important to know when a written consent is also required by provincial law for a medical treatment or procedure. Clients also have the right to withdraw consent at any time. An example of "implied" consent is when a client's behaviour is such that the health care professional knows the client is in agreement, for example extending an arm for an injection.

Emergency Treatment

The law in all the common law provinces and territories and in Quebec allows physicians and other health care professionals to administer treatment in an emergency even if the patient's consent cannot be obtained. Such a situation might arise because of the nature of the injuries or illness, or because no time can be spared in administering treatment. Health care professionals acting in extreme emergencies will be absolved of any liability for administering treatment, provided there is no gross negligence on their part.\textsuperscript{15}

It is important to determine provincial legislation and health care facilities' policies concerning your legal protection in emergency situations.

Confidentiality

Health care professionals have an obligation to respect client confidentiality. Exceptions include when harm may come to a client or when the law requires disclosure, as in suspected child abuse or in infectious diseases cases. Health care professionals who receive confidential information have a duty to protect the information, unless appropriate permission is received to

\textsuperscript{15} Keatings, M., & Smith, O. (2010). Ethical and legal issues in Canadian nursing. Toronto, ON: Elsevier Canada. p. 171
disclose it or there is authorization by a court. Any knowledge about a client is confidential, unless stated otherwise by the client.16

**Confidentiality and Social Media**

Various professional associations and regulatory bodies have position statements and guidelines about social media available on their web sites. Examples of sites where such documents are include the Canadian Medical Association, Canadian Nurses Association, College of Registered Nurses of Nova Scotia and College of Licensed Practical Nurses of Nova Scotia. As a health care professional in Canada, it is beneficial for you to access the web site for your regulatory body or professional association to review documents related to using social media.

**Privacy**

In many provinces, accessing client information from a chart when not involved directly in the care of the client, is a breach of the client's privacy rights and can result in legal action.17

**Legal Protection for Health Care Professionals**

**Professional Liability Protection**

As health care professionals, important information to know is the type of liability insurance required. Information relating to professional liability insurance can be obtained from the applicable regulatory body.

**Documentation**

A client's chart in health care settings is written evidence of the care a client receives. It is a document that facilitates communication among health care professionals. A chart provides evidence of the adequacy of treatments given, how appropriate the care is and the quality of care. Charts may be used in court cases. Examples of guidelines to use for documentation are:

- record events as they occur
- record only your own actions
- document clearly, concisely, accurately and legibly
- make any corrections in charting according to policy
- make regular entries18

Follow employer policies and regulatory body policies relevant to documentation.

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**Examples of Legal Issues in Practice**¹⁹

**Advance Directive:**
- involves a process whereby an individual who is mentally competent plans for a time when he or she could lack the ability to make decisions in relation to medical care. The focus of an advance directive can include requests for and refusals of treatment. One form of an advance directive is to describe specific directions for care, while another form of an advance directive appoints an individual to make treatment decisions on his or her behalf.

**Living Will:**
- a document that identifies an individual refuses measures that will prolong life during a time when he or she is not mentally competent.

**Strategies for Avoiding Legal Problems**

The following table provides an overview of suggestions to avoid legal issues in a health care environment.²⁰

<table>
<thead>
<tr>
<th>Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most health care facilities now require any potential employees to have a criminal check completed.</td>
</tr>
<tr>
<td>It is important to only work within your scope of practice. If you are asked to do anything that is outside your scope of practice or something that you do not have the license to perform, explain that you cannot do it. If, at any time, you are not certain about how to complete a task that is within your scope of practice, be sure to ask for assistance.</td>
</tr>
<tr>
<td>Documentation which is complete, concise, current and accurate protects everyone. Record all events. Medical records may be the most important document in determining the outcome of a legal case.</td>
</tr>
<tr>
<td>Health facilities have a formal process for reporting adverse events. This procedure usually involves completing an incident report to include information which is concise and accurate. These reports are used to collect data on the types of events which occur and to implement appropriate actions to try to prevent similar events from happening again in the future.</td>
</tr>
<tr>
<td>Privacy and confidentiality laws must be followed. Be very careful in speaking about work or information related to work outside of the work setting. Client files cannot be accessed by you unless you have the legal right to do so.</td>
</tr>
</tbody>
</table>

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All care and treatments should be completed properly.

Situations may arise when you need to be an advocate for your clients. If you believe something is not right, talk to the appropriate individual rather than ignoring a situation. In some cases, clients may be fearful of addressing a situation or they may believe that no one will listen to them.

Unethical or illegal activities should not be ignored.

Knowledge about the type of liability insurance you have as a health care professional is important information for you.

Activity 2: Legal Aspects

1. Identify Acts/Regulations available on the web site for your health profession.

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2. Identify examples of potential negligence in your profession.

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3. Identify examples of other legal issues that may arise within your profession.

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4. Based on the information discussed about legal aspects in this unit, are there any concepts presented that were different in relation to your previous education or experience as a health care professional? If yes, which ones?

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5. Search the web site for your regulatory body and locate the section that describes conduct cases. Briefly explain the types of cases that have been brought forth to the regulatory body.

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6. Based on the ethical and legal aspects presented in this unit, identify what you may need to know or do differently to work as a health care professional in Canada.

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