

Duty of Care

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Aims

- Clinical Scenario
- Discuss concept of Duty of Care
- NZNO publication entitled “Obligations in a pandemic or disaster: A Guide for NZNO Members” (2008). Available to order from www.nzno.org.nz.

Scenario Part 1

- You are a Registered Nurse arriving for a shift on a medical ward in a public hospital. You are the Nurse in Charge for the Shift. At handover you are informed that the ward is almost full, and that there is an impending admission from the Emergency Department.
- This patient has taken an overdose of paracetamol and has expressed suicidal thoughts. Because of an intravenous infusion the patient has not been admitted to the mental health unit. The Emergency Department states they are overloaded and need to send the patient up to the ward immediately.

Scenario Part 2

- You are familiar with the National Guidelines for the Assessment and Management of People at Risk of Suicide (New Zealand Guidelines Group) . This national standard was discussed at a study day organised for the medical ward, and outlines the criteria for 1: 1 specialling for such patients at high risk of suicide. The medical staff have documented 1:1 specialling as part of the management plan.
- Due to staffing difficulties, you have been informed by the afterhours shift coordinator that 1:1 specialling will be unable to be provided for at this stage, and that the Afterhours coordinator is seeking to find one currently. The new staff member on shift with you also raises his concerns to you as he will be caring for this patient as part of his workload.

Nursing: Obligations (& Rights)

- ***Employment***

eg. employment agreement, job description, being a team member.

- ***Personal***

eg. family, pets, personal and financial responsibilities.

- ***Professional***

eg. Code of Conduct and Scope of Practice (NCNZ), Professional Standards, National Guidelines.

- ***Legal***

eg. HPCA Act 2003, Health & Disability Commissioner Act 1994, Health & Safety in Employment Act 1992.

Defining Duty of Care

- Is different from “the duty to provide care” and “the duty to give care”..
- It is a legally imposed obligation or duty (as described in common law) on *all people* to “take care”.
- It is about ensuring our actions or omissions do not harm someone else.

Defining Duty of Care

- It involves two people: the person who owes a duty and the person it is owed to.

- An example:

I want to light a fire on my land to burn rubbish. I set the fire close to the fence where my neighbour has a hay shed. I owe a “duty of care” to my neighbour to take care the fire doesn’t spread to his shed.

Duty of Care: The Nursing Perspective



- A nurse has a duty of care to prevent harm to a patient s/he is nursing.
- The *amount* of care the nurse is required to take to ensure no harm to the patient by his/ her actions or omissions depends on a number of factors.

Duty of Care

- These factors include:

The magnitude of the potential harm

The extent to which it was foreseeable

How much you could objectively be expected to take care to prevent the harm.

Duty of Care

- As a Nurse it is expected you will take the same amount of care to prevent harm as any “reasonable regulated nurse” would do in that specific situation.

Duty of Care: The Team Perspective



- All Team members & Employers have a duty of care.

Health and Disability Commissioner Act 1994 & Code

- “A provider is not in breach of this code if the provider has taken reasonable actions in the circumstances to give effect to the rights, and complies with the duties, in this Code. The onus is on the provider to prove that it took reasonable actions. For the purposes of this clause, the circumstances means all the relevant circumstances, including the consumer’s clinical circumstances and the provider’s resource constraints”

(NZNO, 2008, p.11)

Proving negligence

- Four elements constitute an action of negligence in law.
- Person (A) in order to prove negligence on the part of another (B), must show that :
 1. B owed a duty of care to A.
 2. B has breached that duty of care, through some activity or lack of it.
 3. A has suffered some physical or financial harm
 4. B's breach of duty caused the harm.

Johnson, S. (2004). *Health Care & The Law*. Wellington: Brookers Ltd.

Accountability in the professional context

- “The basis of most findings against health professionals in nearly all the forums that can hold them accountable is negligence, and the principles underlying the law of negligence permeate every possible activity a practitioner may engage in, *either on duty or off duty*”

Johnson, S. (2004). *Health Care & The Law*. Wellington: Brookers Ltd.

Duty of care: Leadership



- “the nurse reports to an appropriate person or authority any limitations in professional expertise or personal health status or circumstances that could jeopardise patient/ client safety”

Nursing Council of NZ. (2005). *Code of Conduct for Nurses*. Wellington: Author.