

**EDITORIAL****Ethical and Legal Aspects of Nursing Care: a Focus on the Greek Legislation**

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**Abstract**

The main nurse's responsibility is to take care of the patients who deserve appropriate and safe care. Nurses have to know ethical issues in order to conduct their care, and to give safe and proper legal and ethical care in their patients. The ethics of health care includes the principles on how professionals fulfill their responsibilities.

There are eight ethical principles that nurses consider when making decisions in clinical setting: autonomy, beneficence, nonmaleficence, truthfulness, justice, paternalism, faith and devotion, respect for others. Nurses have to know the tort differs from the offense. Any human behavior disapproved of the law is tort. Also, it is useful for them to know that criminal responsibility is born when the offenses described in the criminal law intentional and only exceptionally when solemnized, negligence, while for the case of tort and negligence suffices.

Nurses should have special competence and knowledge about ethical and legal issues. They have to act legally in order to protect their patients and themselves. Further research is needed in order to understand how nurses behave in practice in difficult situation.

**Key words:** ethical, legal, nurses, law, tort, offense

**Introduction**

The main nurse's responsibility is to take care of the patients who deserve appropriate and safe care (Shahriari et al., 2013). Care is the core concept of nursing (Sapountzi-Krepia 2013), so nurses have to know ethical issues in order to conduct their care, and to give safe and proper legal and ethical care in their patients (Shahriari et al., 2013). The ethics of health care includes the principles on how professionals fulfill their responsibilities (Beauchamp & Childress 2009).

**Ethical principles and rules**

There are eight ethical principles that nurses consider when making decisions in clinical setting: autonomy, beneficence, nonmaleficence, truthfulness, justice, paternalism, faith and devotion, respect for others.

The principle of autonomy recognizes the personal freedom and the right to choose how someone will manage himself (ANA

2013). The legal principle of informed consent is a direct reflection of this principle. Autonomy presupposes respect of the health care providers in the patient's rights, even if the health professional does not agree with the decisions taken (Guido & Watson 2010). Furthermore, it is reported that autonomy in decision making is a value and "autonomy in decision making necessitates giving appropriate and adequate information to the clients and, if necessary, to their families".

The principle of beneficence -determines the actions of a person to promote the good (Beauchamp & Childress 2009). In patient care, good can be defined in many ways, such as to allow a person to die without life support and the presence of his beloved persons. The good may prompt the nurse to encourage the patient to undergo extensive, painful treatment procedures, and this concept can also be extended to the family of the patient (Guido & Watson 2010). As a result of beneficence, the principle of nonmaleficence suggests that a person should not cause damage (Ethics Resource Center

2009). Health professionals often use the concept of harm-benefit analysis when the issue of harm occurs. Using this analysis, the focus of the present treatment lies in the benefits offered to the patient and not the discomfort that arises at the time of intervention.

The truthfulness embodying the idea that people should always tell the truth. This principle imposes, also to reveal the whole truth (Ethics Resource Center 2009). Health professionals give an example of this principle when they report truthfully all data for one condition and then help patients and the patients' beloved persons to take the appropriate decisions. The principle of truthfulness requires team members care to fully inform patients about all aspects of care for both the desired effects and the negative effects.

Justice refers on equal and fair treatment of individuals (Butts & Rich 2008). This principle is usually applied at times of supply shortage or when there is competition for resources or profits (Guido & Watson 2010). The justice also demands from the health care professionals to provide the same quality care to all patients, regardless of ethnicity, socioeconomic status or lifestyle (Verpeet et al., 2003; Rassin, 2008; Shih et al., 2009).

The principle of paternalism allows one to make decisions for someone else, and often has been considered as negative or unwanted authority (Butts & Rich 2008, ANA 2013). With proper use, however, this principle helps people to make a decision. Staff members often use a certain degree of paternalism when they help patients and family members to decide whether they should proceed to surgery or medication is best option (Guido & Watson 2010).

Faith means keeping promises or commitments of someone. Staff members should not make promises to patients who cannot comply, as the assurance that they will not call code before consulting the doctor for such a mandate, or that a patient will be able to return to his home in a specific time (Guido & Watson 2010).

Many consider that the principle of respect for others is the highest principle and

incorporates all the rest. Respect for others recognize the right of individuals to make decisions and to live by those decisions. Respect for others outweighs the cultural differences, the conflict of gender and racial prejudices. The nurses positively reinforce this principle daily, providing adequate nursing care to all patients without exception (Gallagher 2004, Guido & Watson 2010).

### **Criminal liability**

Criminal law is the branch of law that defines criminal offenses and penalties imposed on perpetrators (Duhaim's Criminal Law Dictionary 2013). Especially criminal law enshrines certain human behavior, action or omission on offence, crime and threat and of which criminal penalties, imprisonment, deprivation of political rights, confiscation of proceeds of crime etc.

The question that immediately arises is whether the concepts of tort and the offense are identical. The answer is negative.

The tort differs from the offense. Any human behavior disapproved of the law is tort (Simons 2008). To be a criminal act must be specifically declared by the criminal law, namely the Penal Code and special penal laws. Indeed according to the Constitution (Article 7 paragraph 1) there is no crime or penalty imposed without law in force prior to the commission of the act and which defines the elements, while according to the first article of the Criminal Code penalty is not imposed except from those transactions for which the law had explicitly set before the act was committed (Hellenic Constitution).

So, only when there is express legislative provision, there is an offense and can thus be sentenced the offender. The penalty, however, as a result of committing an offense, has a completely different view from the compensation of the person that is damaged, as we know, the consequence of committing a tort.

For this reason, the criminal liability of the offender's offense is completely different from the tort, as a form of liability. Their diversity concerns on the objectives that each of these aims, but also in the law that develops and adopt to achieve these aims, the tort liability seeks compensation for damage

caused to the victim for example the satisfaction and protection the private interest is the interest that adversely affected as a means to achieve this protection are through the imposition on tort the obligation to indemnify him who harmed (Duff 2009). The criminal liability, on the other side, disapproves legal system in regards to the behavior of the offender, because of the criminal nature of his will and risks the criminal character involves the public interest, the interest of society that includes all citizens, regardless of whether that conduct caused or not any damage (Duff 2009).

For this reason, the means chosen by the legislature is the penalty, the punishment of the offender, whether he did or not repeated challenge injury. The sentence imposed on the offender even if he failed to commit offense, for specific purposes. First, to prevent the state and the commission of other crimes by him, he is punished, depending on the type and severity of the penalty, improvement, intimidation or scrapped e.g. imposition of life imprisonment, a special provision (Satlanis 1999, Obessi 2007). But to prevent the commission of crimes by other members of society, that under the threat of the imposition and execution of sentence, are intimidated and definitely are improved in behavior. Indeed, the mere threat of criminal sanction in case of committing offenses, acts for most people as a deterrent to the commission, as general prevention. Never, however, the penalty is intended to compensate the victim from the offender such as in case of theft. Besides, the penalty is only imposed on the perpetrator and not to his heirs who of course death is not criminally responsible and therefore not punishable. The opposite is the case tort, the tortfeasor's liability for damage to the injured person charged and his heirs. Thus, the heirs, in case of death of tortfeasor still be held liable, the same now towards the victim (Obessi 2007).

Apart from the desirability of different consequences in the event of a case of tort, damages and criminal liability should mention the following distinction; criminal responsibility is born when the offenses described in the criminal law intentional and only exceptionally when solemnized,

negligence, while for the case of tort and negligence suffices.

In the latter case, the fact person that occurs the tort will pay all the compensation, he will restore all the damage done in according with all that it have already been said about the case, while the perpetrator of a crime punishable stricter or more lenient, depending on how much blame. There are, after all, acts that are criminalized and punished only if they are intentional.

However, the tort disapproved of the law, which happens very strongly even in the case of the offense, there are behaviors that are simultaneously tort and crime, such as theft, embezzlement, fraudulent charges of damage to property (Obessi 2007, Duff 2009).

### **The Nursing Disciplinary Responsibility- Nursing Disciplinary Responsibility in the Public Sector**

The Law 3329/2005 on the National Health and Social Solidarity outlines the disciplinary regime for general hospital staff non-medical. The Governor of the Hospital, as a disciplinary Head may impose against him, except from the medical staff of hospitals, health centers and regional clinics competence, also the punishments of reprimand and a fine of up to half of monthly earnings. The same responsibility also has the Chairman of the Board any Social Care Unit.

The Board of the Hospital and the Board of Social Care Unit, as collective disciplinary bodies may impose against other than medical personnel competence penalties of reprimand and a fine of up to one month salary. The Commander of the Health Region (Regional Health) as a disciplinary Head may impose against other than medical personnel and DYPE all regulated by this healthcare provider and Social Solidarity (Hospitals, Health Centres, Social Care Units, Mental Health and addiction , etc. ) the penalty of reprimand and a fine of up to half of the monthly salary. It can also carry out its own motion or upon referral by a competent disciplinary body prior investigation and sworn administrative inquiry (SAD) against the Governors of the Hospitals of competence and if it considers should be brought disciplinary proceedings

against them makes a recommendation to the Minister of Health and Social Solidarity. The Governor and the Governor Regional Health Hospital is disciplined Heads Deputy Governor of the Hospital (Law 3329/2005).

Against disciplinary decisions of these bodies may exercise an opposition Tier Service Board, which shall exercise disciplinary jurisdiction by other than medical personnel of Regional Health Administration of regulated health service providers and Social Solidarity, either in the first or in second degree, after an abjection as this Council when judge misconduct in the first degree, may impose any penalty. When a final decision may be filed an appeal before the Appellate Disciplinary Board of Law 2683/1999.

#### **The provisions of Law 3252/2004 on establishing the Union of Nurses - Nurses' Association (ENE)**

The establishment of a carrier in the form of a legal person under public law of Nurses, structured in central administration and regional divisions in all health districts of the country, where all nurses are now having a registry number implemented by Law 3252/2004 Recommendation Union of Nurses - Nurses Greece.

The Union of Nurses, divided into Central Administration and Regional Departments, institutions managements of the Assembly of Representatives and the Board, governing bodies of each regional section is the General Assembly and the Regional Council.

In addition to the organizational, Law 3252/2004 contains rules of conduct relating to all nurses mandatory, most members of the Nurses Union, whether they work in the public or private sector. So provided that the Regional Councils act as disciplinary bodies and the procedure before it is analyzed in detail (Law 3252/2004).

#### **The Disciplinary Board of Law 3252/2004**

It is about disciplinary councils at the district level and the Supreme Disciplinary Council.

Each Regional Council is responsible for disciplinary and disciplinary offenses that members of their regional division. The Supreme Disciplinary Council shall consist of seven members and an equal number of

alternates, of which one is Civil Appeals Courts with alternate, who presides. Secretarial duties performed by the Secretary of the Board of ENE, who shall keep the facts of the meeting. The Supreme Disciplinary Council is judging in neutral extent disciplinary membership of EMU after referral or complaint. It also has jurisdiction to hear disciplinary misconduct Board members ENE and the Regional Councils (Obessi 2007, Law 3252/2004).

#### **Proceedings before the Disciplinary Boards and before the Disciplinary Regional Council**

If the same offense is being prosecuted by the nurse, the Disciplinary Board is not precluded from examining the same transaction and is entitled to stay at the discretion of the disciplinary proceedings until a final decision by the criminal courts. The innocence or conviction of the court is not a precedent for the Disciplinary Board. This means that the Disciplinary Board is not bound by the content of the decision of the criminal court and may decide instead of this.

Following a decision of the Board upon submission of this complaint against a nurse or a finding of any misconduct by the Board, referred the disciplinary offense in the first meeting of the Disciplinary Council, acting reasonably within fifteen days whether to execute disciplinary action or not (Obessi 2007).

The Disciplinary Council takes any necessary examination by one of its members, designated as rapporteur. The rapporteur has the power to summon and examine witnesses under oath (Tsountas 2002).

Disciplinary penalty is not imposed before or apologize deadline called for an apology and do not see the nurse prosecuted disciplinary (Obessi 2007). The Chairman of the Disciplinary Council is obliged to call the nurse prosecuted disciplinary dial engaged bailiff to take cognizance of the indictment drawn up by the rapporteur (Tsountas 2002).

The Disciplinary Council, on the day that has been determined, may examine witnesses at his discretion, and after his apology disciplinary persecuted if he does not appear

after verifying that it has been called legally issue a decision. If necessary, it may order completion of the indictment and questioning. In any case, the accused is entitled to be represented by attorney.

After the apology or the persecuted disciplinary default, the Disciplinary Board shall make a final decision no later than eight days from the date of the meeting. The decision must be notified within eight days from the issuance of the nurse (Obessi 2007).

### Conclusions

Nurses in order to meet the patients' needs, should have special competence and knowledge about ethical and legal issues. Nurses have to act legally in order to protect their patients and themselves. There is a great need for further research in order to understand how nurses behave in practice in difficult situation and if they have the ability to focus on the ethical dimension of care.

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