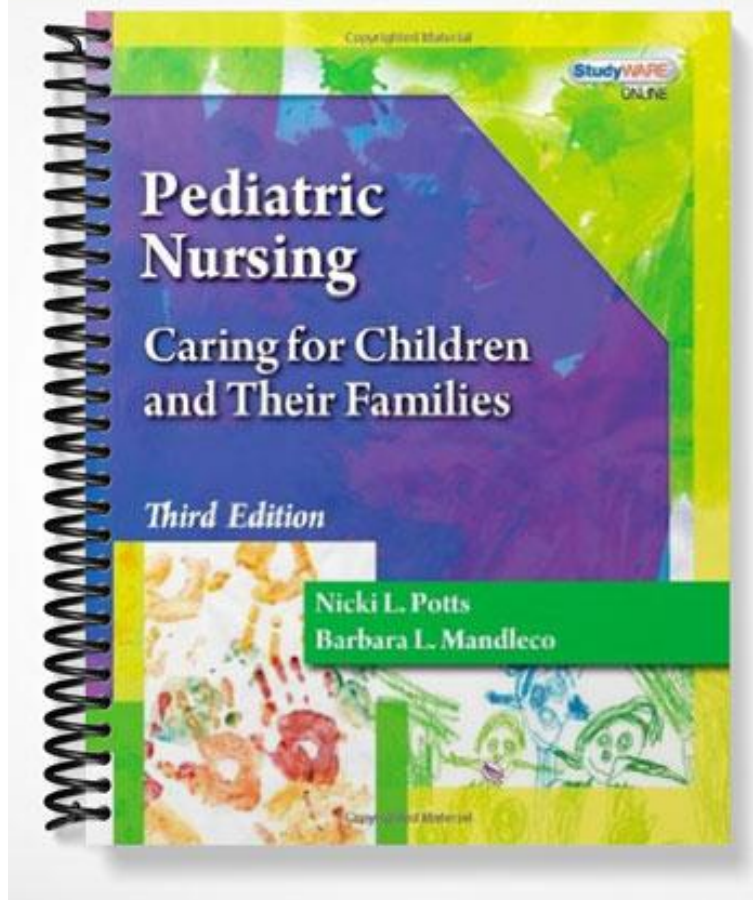


SOLUTIONS MANUAL



CHAPTER 2

Legal and Ethical Issues

COMPETENCIES

Upon completion of this chapter, the reader will be able to:

- List state, federal, and judicial sources of law.
- Identify the elements of informed consent.
- Describe a situation in which a minor can consent to or refuse health care.
- Identify situations in which a nurse can breach confidentiality.
- List the elements of negligence, and describe nursing practices that can reduce the risk of malpractice claims.
- Identify major ethical theories and principles.
- Describe the process of ethical decision making.
- Discuss several ethical dilemmas and how these influence children, their caregivers and families, and health care professionals.
- Describe the role of ethics councils in nursing practice.
- Successfully complete the games and activities in the online student StudyWARE.

KEY TERMS

age of majority	communitarianism	malpractice
anencephaly	deontologic theory	minor
assent	divorce decree	moral behavior
autonomy	emancipation	negligence
autopsy	ethics	non-maleficence
beneficence	euthanasia	parens patrie
bioethics	fidelity	teleologic theory
boundary worker	informed consent	utilitarianism
brain death	justice	values
care theory	liberal individualism	veracity

TEACHING METHODS AND STRATEGIES

This chapter presents the basic concepts of ethical and legal issues of nursing practice. It is important for readers to clearly understand these issues in order to understand how they relate to the pediatric client. The time necessary to present this material will depend on the level of knowledge students already have on ethical and legal issues of nursing.

Lesson Plan: Legal and Ethical Issues

Method

- Lecture
- Discussion
- Slides/Transparencies

Learning Experiences

Read the chapter opener. Initiate discussion by asking questions to stimulate thinking on the ethical and legal aspects of pediatric nursing.

- Was the nurse practitioner right in giving Amy samples of birth control pills?
- Should Amy's mother have been involved in the decision?
- What is the legal responsibility of the nurse practitioner when providing care to a minor?
- What are the ethical issues in this situation?

After a short discussion, emphasize the importance of understanding the legal and ethical issues of pediatric nursing practice.

Content Outline

The content in this chapter often stimulates numerous questions as it is being presented. Interspersing questions or encouraging students to ask questions throughout the class may increase student involvement in the learning process.

Legal considerations

Informed consent and assent for health care

When informed consent is not required

When a minor can consent for care

Parental consent after divorce

Refusal of health care by parent or child

Obtaining informed consent under special circumstances

Consent for donation of tissue or organs

Consent for genetic testing

Children and medical experimentation

Confidentiality

When a minor can receive confidential care

When a health care provider can breach confidentiality

HIPAA and patient confidentiality

Malpractice in the pediatric setting

Duty

Breach of duty

Causation

Damages

Malpractice prevention

Medical records

Legal resources for pediatric nurses

Concepts of ethics

Ethical theories

Ethical principles

Professional Codes of Ethics

The ethical decision-making process

Ethical dilemmas

- Withholding and termination of life-sustaining treatment
- Newborn screening
- Perinatal/neonatal and pediatric postmortem examination
- Organ donation and transplantation
- Religious preferences and immunizations
- Using children as research subjects
- Children's assent to treatment
- Other ethical dilemmas
- Newborn genetic screening

Ethics councils

Future implications for pediatric nursing

Discussion/Group Activities

There are five reflective thinking situations in the chapter. It is suggested that group activities be used at the end of the content presentation. Depending on the number of students, one or two groups could be assigned a reflective thinking situation to discuss followed by sharing of group discussions with the entire class.

Reflective Thinking: Organ Donation

You are a registered nurse and your 17-year-old son is the star quarterback for his high school football team. A football scholarship may be his only hope for a college education. Your 13-year-old daughter is in renal failure and her only chance for long-term survival is a kidney transplant. Her brother is a perfect match for a transplant. If your son donates a kidney, he will be advised not to participate in contact sports, including football, due to the possibility of injuring his one remaining kidney.

- How would you approach your children and talk to them about choices that will determine their futures?

Reflective Thinking: Does the Threat of Malpractice Improve the Quality of Health Care?

A private health care provider can refuse to accept any client. In a small community, there was a law firm that had represented several clients in malpractice lawsuits against local health care providers. The lawyers and all of their employees were refused as clients by the local providers and forced to travel to another community for health care.

- Would you refuse to provide care to these lawyers and their employees if you were a health care provider in this community? Why?
- Does the ability to sue a health care provider improve the quality of care received by clients? Why?
- What would happen to the quality of health care if physicians and nurses were immune to medical malpractice suits?

Reflective Thinking: Survivability of Multiple Births

Because of dramatic advances in assisted reproductive technology, births of multiples are increasing. When high order multiples are expected, the chance increases that these infants will be born prematurely and compromised.

- A pressing ethical question is whether some of the multiples should be selectively aborted in order to provide increased opportunities for fewer fetuses to fully develop and be viable.

Reflective Thinking: Palliative Care

Parents of infants born in the margin of viability (22-23 weeks gestation or "micro-premies", subject to a 34% death rate) or children with a terminal disease face the dilemma of instituting, continuing, or ending treatment and instead pursuing "compassionate" or palliative care.

- As a nurse, how would you respond to the query of a parent about changing the focus of care?
- What facts would you need in order to respond appropriately?

Reflective Thinking: Maintaining Life

A family has a compromised newborn in the NICU because of anoxia at birth. The couple has two other children, 2 and 5 years old. Their daughter has been weaned from the ventilator but remains unconscious and is receiving parenteral nutrition. The parents request withdrawal of fluids and nutrition. The staff has mixed feelings about this request. Some of the nurses are feeling moral distress and the parents are also suffering and grieving the “loss” of the normal newborn they envisioned having (Butts & Rich, 2008).

- What are your feelings as a nurse caring for this neonate?
- When you meet with the neonatologists, the chaplain, and the social worker, how would you contribute to the discussion of this case?
- Would you suggest a consultation with the ethics committee?
- What role would the committee take in the decision making process?

ANSWERS TO CRITICAL THINKING QUESTIONS

Critical Thinking: Medical Center Policy and Procedure

You are the nurse risk manager for a hospital in a state where there are not statutes or court decisions determining when a minor can consent for health care. It is your job to create a hospital policy defining when a child can consent for care.

1. Does the Illinois Supreme Court provide a definition that would allow your hospital to create precise guidelines for when a minor can consent to care? Why?

Answer: The Illinois court case does not give specific guidance for writing a policy because the standard of “mature enough to appreciate the consequences of actions and mature enough to exercise the judgment of an adult” is very subjective and open for extensive interpretation.

2. Does the Tennessee court provide a better definition for deciding when a minor can give consent for health care? Why?

Answer: The Tennessee court lists factors that can be considered, but does not define the factors in a way that gives a clear answer to the question. To solve this problem the nurse risk manager could write a policy that sets up a procedure for a child to petition the hospital to obtain the right to give consent for health care after the individual is given an opportunity to demonstrate maturity. The parents or guardians should also be allowed a chance to intervene if they oppose the hospital’s decision. In a case where the parents or guardians oppose the child, the courts may ultimately decide the issue.

3. If a United States Supreme Court decision conflicts with your state statute, which rule would you follow, the state law or the Supreme Court ruling?

Answer: The United States Supreme Court overrules any state statutes

Critical Thinking: Ethical Choices?

An adolescent mother unexpectedly gave birth at home at 26 weeks, claiming she was not aware that she was pregnant. The newborn was taken to the hospital, resuscitated and put on a ventilator. Upon further examination, it was noted that there was incomplete brain development due to a carotid artery obstruction during pregnancy. The single, unemployed, adolescent mother without a support system to rely on was informed about the severe impairment of her child. It was recommended that life support be removed. There are many ethical questions, such as:

1. Would it be in the best interest of a severely handicapped child to be raised by a young, inexperienced mother?

Answer: One might say it is not in the “best interest” of the child to be raised by a young, inexperienced mother, but the child belongs to the mother. We cannot choose who will be a child’s mother. Should the child survive, the mother is responsible for her child. The mother would need a great deal of support and services to learn to care for the child.

2. Would it be in the best interest of the young mother to invest so much time and energy caring for this child?

Answer: Looking at adolescent mothers, their lives are drastically changed with the birth of a child. Future plans need to change when a child arrives. A handicapped child creates a difficult situation for any age mother. Certainly, an adolescent would have a difficult time adjusting to the care this child would need. It would be difficult to find child care so the mother could complete school and/or work. One might say it is not in the “best interest” of the young mother to invest the time and energy, but the child belongs to the mother and she is responsible unless it is determined that she is an incompetent parent.

3. Would it be appropriate for the state to assume the immense costs of keeping the newborn alive with the provision of life-long specialized care?

Answer: This is a difficult question to answer. There are many different views based on individual ethical beliefs. Some would feel that the child is alive and should be cared for and kept alive because it is a human life. Others believe life support should be discontinued due to the significant lack of brain functioning. The costs of maintaining life support and long term care are great. Individuals have feelings about where the health care dollar should be spent. There are views on spending those dollars for the greatest good for the greatest number of people. There are also views on providing needed care to the individual. Should the family decide not to remove life support, this could become an issue for the ethical council as well as the court to decide what to do.

Critical Thinking: Religious Beliefs and Immunizations

1. Why would parents be uncomfortable for religious reasons with having their children immunized?

Answer: Parents may refuse to have their children immunized because they prefer complementary approaches or believe that their faith will heal their child and keep her safe. They may also raise personal or philosophical objections, and claim “it’s in the hands of the Lord”.

2. How might you articulate your respect for the religious views of the parents while making clear that you believe immunizations is best for their children’s health?

Answer: The nurse should exhibit an understanding of the parents’ views on immunization and let the parents know it is their decision. Providing information about the benefits of immunizations and the risk of not immunizing is also helpful. The nurse should ask the parents if they are concerned about side effects, and answer their questions.

3. How can you educate parents about immunization recommendations and develop a compromise that is acceptable to the parents?

Answer: The nurse should listen to the parents’ concerns. The nurse should provide information about each immunization. The recommended schedule of immunizations should be reviewed and the parents should be aware that they can start the immunizations at any time if they chose to not start on the regular schedule. It is important to educate parents about the implications for the child if he/she is not immunized. It may help to suggest they talk with other parents as well. Should the parents ultimately decide not to immunize their child, the nurse should provide information about the diseases. At each well child visit the nurse should readdress the issue, provide information and answer the parents’ questions. It is important to respect the parents’ wishes and not present a judgmental attitude regarding their choices.

Critical Thinking: Children in Research Studies

Jim S., a graduate nursing student, wishes to study children's perceptions of family-centered care utilized at the health care agency. The study would involve recruiting children ages 7 to 18 years receiving care in both inpatient and outpatient settings. How should Jim proceed to ensure the protection of the children in the sample as he plans his research methodology?

Answer:

Seek Institutional Review Board (IRB) approval.

Require parental consent for subjects younger than 18 years; children ages 7 to 17 years must also give assent.

Require consent for those 18 years of age.

ANSWERS TO REVIEW ACTIVITIES

1. A nurse is volunteering at a community clinic. Where can she find out whether she is legally responsible if she does not provide appropriate treatment to a child at the clinic?
Answer: The nurse should start by looking in the Nurse Practice Act and the regulations of the Board of Nursing in the state of employment. Other state laws may also assist her in this area.
2. If a nurse is permitted to give intravenous narcotics in Idaho, should she assume that she can legally give intravenous narcotics in New Hampshire?
Answer: No. The Nurse Practice Act and the regulations of the Board of Nursing of Idaho may differ from those of New Hampshire. Each state has its own Nurse Practice Act and regulations governing the practice of nursing in that state.
3. The Stone Drug Company wants to study a new antidepressant to see if it decreases sexual drive in adolescents. Would this study receive approval by an institutional review board?
Answer: This study is unlikely to receive approval by an Institutional Review Board. It is generally believed that children should not be the subjects of a research study unless there is a benefit to the child or to children in general. This study will not benefit the child or other children. The information gained from this study is not useful in the care of children, but has much greater implications for the adult population.
4. You are taking care of a 3-year-old child who climbs out of the crib and breaks her arm. List the steps you would take to protect yourself from a possible malpractice suit.
Answer: The following steps should be taken to protect the nurse from a possible malpractice suit:
 - Obtain help for the injured child immediately.
 - Document the facts surrounding the incident including the chronology of the care and the incident.
 - Avoid discussing the incident with others.
 - Notify the appropriate people: the child's physician, the nursing supervisor, and the risk manager.
 - Do not alter or falsify the medical record.
5. A 14-year-old with osteosarcoma (bone cancer) wants to receive an experimental chemotherapy treatment that the parents refuse. How would the nurse approach this situation?
Answer: Legally, a child under the age of 18 must assent or give permission to receive experimental treatments. The parents or legal guardians must also voluntarily consent for their child to participate in experimental treatments. In this situation, the child cannot receive the experimental treatment if the parents do not give permission. The nurse could facilitate a discussion with the child and parents, allowing each to share their view on the experimental chemotherapy. This may assist them in making a decision that would be acceptable to both parents and child.

6. The caregivers of a child who has been declared brain-dead following a car accident must be approached with information about donating the child's organs. Who would give permission for the organ donation?

Answer: The parents or legal guardians.

7. A physician opts to treat a cognitively impaired adolescent seen in the clinic for a sexually transmitted infection (STI) without telling her or her parents of the diagnosis. How could the nurse use an ethics council in this situation? What factors must the ethics council consider?

Answer: In this situation there are a number of ethical issues that may be viewed differently by the people involved. An ethics council would provide a neutral group of people to discuss the situation and identify the ethical issues involved. The council could also identify how the health care facility may want to approach similar situations in the future. Some of the issues to be addressed would be informed consent and confidentiality.