



# LAW AND ETHICS PROGRAM FOR NURSES

*Thriving in Nursing Using a Legal and Ethical Framework*

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## **Preparatory Reading**

Chapter 2 in Savage P. (2014) Legal Issues for Nursing Students: Applied Principles. 3rd Ed. Pearson Education Frenches Forest.

Many Nurses have had a fragmented education in relation to the law that frames Nursing practice and Nursing ethics. While they recognise they must adhere to legal and ethical standards the underpinning philosophies, structures and applications of the Australian legal system and rules of ethics are not well understood.

The recommended reading explains the sources of law and in the context of health identify those areas that are relevant to practice. There are a number of activities that may, to the experienced Nurse seem somewhat basic in their demands. Nurses often underestimate their accumulated knowledge and expertise because they might lack formal, accredited credentials.

So, if these activities demand answers that “everyone knows” it should promote confidence in your experience and ability to apply legal and ethical concepts to a situation.

Recognising that it is legislation that gives directions to policies and governance in all health-related activities it is a worthwhile skill in being able to identify and find relevant legislation.

Reading an Act may be a tedious exercise and certainly interpreting some statutes is a specialist skill, it is worth going to the source of a directive, policy or rule to establish exactly what the legislators intended.

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### **The Author: Dr Pam Savage, RN, Dip N (Lon), BA, MHPEd, Dip Law, EdDoc**

Pam has an extensive background in clinical Nursing, education, and remote area Nursing both in Australia and overseas.

As a Lawyer and Clinician, this background is brought to her role as adjunct Lecturer to undergraduate and postgraduate students as well as Aboriginal Health Workers.

Pam is a Barrister at Bar (NSW) and a published author and her book “Law for Student Nurses: applied principles” is now in its third edition.

A major focus of her current work has been designing undergraduate and postgraduate law courses for Nurses and community health workers. As a regular contributor to the Nurses for Nurses Network, her blogs and webinars address issues of professional and legal governance that have relevance to Nurses working in many environments.



# **MODULE ONE: Ethics**

## **5 CPD Hours | Mode of Delivery: Face to Face / Online**

Every Nurse and Midwife would consider themselves an ethical person. We have been taught to conform to the social rules of our culture, family, religion, education and profession. Yet in a culturally diverse society the rules that govern one group may not be understood or adhered to by another. This can lead to conflict and the imposition of expectations by a dominant system on those who may be vulnerable or powerless.

In professional practice an individual's beliefs may not represent the profession. We cannot apply rules arbitrarily because they are "what we were taught". There are laws that entrench certain ethical standards and failing to adhere to these can lead to sanctions.

The philosophical basis of ethics as a focus of study are complex and the historical roots reflect language and concepts that have, at some time, been deemed fair and just and at other times seriously flawed. Yet we need, as professionals, to be able to demonstrate we are practising ethically so we need to explore and apply ethical reasoning to our practice.

### **Module Learning Outcomes:**

- Understand the basic principles of ethical philosophy
- Relate ethical concepts to ethical belief systems
- Consider the evolution of western ethical belief systems in health care
- Apply legal and ethical standards to practice

### **Topics Covered:**

#### **An Overview of Ethics**

At the end of this session you will:

- Acquire knowledge in ethical theories and principles
- Define ethics and relate these to professional expectations
- Relate cultural diversity to ethical considerations
- Identify Australian legislation entrenching human rights

#### **Bioethics and Professional Codes of Ethics**

At the end of this session you will:

- Appreciate the major principles of health professional ethics
- Understand bioethical principles and relate these to Nursing issues
- Consider the practical purpose Codes serve
- Relate the Code of Ethics to Nursing practice

#### **Demonstrating Ethical Nursing Behaviours**

At the end of this session you will:

- Understand the potential professional consequences for failing ethical Nursing standards
- Recognise early warning signs of inappropriate ethical behaviour
- Promote equity and equality in care provision
- Relate Good Samaritan laws to Nursing ethical standards

#### **Identifying and Solving Ethical Problems**

At the end of this session you will:

- Develop and/or evaluate effective strategies for managing ethical dilemmas inherent in patient care, the health care organisation, and research
- Understand Ethical Decision-Making Processes
- Review the relationship between ethics and legal governance
- Consider strategies to determine client's values and beliefs

## **Apply Ethical Reasoning Skills to Real World Situations**

At the end of this session you will:

- Recognise the ethical issues common to specific patient populations or clinical settings
- Consider the choices of action based on ethical principles
- Develop and/or evaluate effective strategies for managing the ethical dilemmas inherent in patient care
- Understand ethical principles underpinning Nursing research

## **MODULE TWO: Professional Governance and Regulation**

### **8 CPD Hours | Mode of Delivery: Face to Face / Online**

The legal and professional obligations that Nurses must satisfy can be a source of anxiety and confusion. Some areas of practice carry risks to the client or colleagues. Understanding the sources of control and the standards expected for Nurses can aid the clinician in their decision making and meeting legal requirements.

#### **Module Learning Outcomes:**

- Understand the sources of law that govern practice
- Relate governance standards to practice
- Recognise behaviours that may lead to complaints
- Appreciate the consequences of failing to satisfy legal and governance standards

#### **Topics Covered:**

##### **Accountability and Scope of Practice**

At the end of this session you will:

- Relate the laws governing Scope of Practice to your own work
- Understand the rules of delegation and apply these to practice
- Apply the principles of the National Framework to workplace decisions
- Recognise the steps that must be undertaken to safely advance your own Scope of Practice

##### **Delegation**

At the end of this session you will:

- Understand the legal obligations of registered Nurses when delegating aspects of Nursing care
- Define the legal responsibilities for supervision
- Apply the rules of appropriate delegation when giving direction for patient care
- Implement protocols and policies that ensure patient needs and staff skills are matched

##### **Boundary Crossings and Boundary Violations**

At the end of this session you will:

- Understand the concept of Professional Boundaries
- Relate guidelines for maintaining Professional Boundaries to practice
- Recognise the professional consequences of failing to maintain Professional Boundaries
- Consider cases where failures have been established

##### **Racism and Bullying in Nursing**

At the end of this session you will:

- Recognise the way racism and bullying are entrenched in Nursing behaviour
- Have the ability to discriminate between bullying and management comments
- Recognise habits of speech and practice that may be interpreted as bullying
- Understand professional standards that aim to prevent bullying behaviour

##### **Documentation**

At the end of this session you will:

- Define the common forms of Nurse records and when these are utilised in legal proceedings
- Implement evidence based strategies for structuring records
- Relate legal principles to assess your own record keeping
- Recognise causes of inadequate recording and take steps to avoid these

## Clinical Handover

At the end of this session you will:

- Articulate the purposes of clinical handover
- Understand the risks of inadequate handover
- Apply strategies to ensure data is structured and presented to promote effective care
- List those data that should be included in handover

## Mandatory Reporting

At the end of this session you will:

- Understand the absolute requirements for Mandatory Reporting for the Nursing profession
- Relate the legislative requirements for reporting clients at risk and what those risks are
- Discuss the protection the law provides for reporters and in what circumstances
- Explain the sanctions that may be imposed for failing to report legally required information

## Disciplinary Actions and Professional Findings

At the end of this session you will:

- Understand the processes of investigation and professional hearings
- Define the terms unsatisfactory conduct and professional misconduct
- Know your rights in law should you be involved in a disciplinary action
- Relate behaviours identified in cases to findings and sanctions

# MODULE THREE: Common Law Torts

## 3 CPD Hours | Mode of Delivery: Face to Face / Online

One of the major areas of the common law is Civil Law. The rules of procedure, jurisdiction, and the types of cases that can be heard and appealed are complex. The rights of the individual citizen are often supported by the Civil Law. There are numerous torts that can be actionable. In relation to health matters most have little relevance. Some torts however, have an increasing importance such as defamation, others have established legal rules that must be adhered to.

### Module Learning Outcomes:

- Relate Civil Law rules to actionable Torts
- Understand how habits of practice and communication may open the way for actions
- Relate human rights principles to legislation governing practice
- Examine case findings giving direction for practice

### Topics Covered:

#### Defamation and Social Media

At the end of this session you will:

- Understand the concepts of Defamation and Slander
- Relate the rules of defamation to actionable behaviours
- Link the use of Social Media to Defamation and Slander
- Apply legal findings to Social Media risks

#### Consent and Trespass

At the end of this session you will:

- Understand the legal rules for Consent
- Relate the Tort of Trespass to workplace situations
- Identify the legal risks of emergency situations
- Recognise how Guardianship legislation relates to legal Consent

#### Confidentiality and Privacy Law

At the end of this session you will:

- Define Confidentiality and Privacy
- Explore situations that negate expected standards
- Understand the Privacy Principles entrenched in Australian law
- Appreciate the particular rules governing patient privacy and confidentiality

## **MODULE FOUR: Common Law Tort of Negligence**

### **3 CPD Hours | Mode of Delivery: Face to Face / Online**

The civil law Tort of Negligence is the most likely cause of action against health practitioners. In spite of the passage of Civil Liability Legislation in every state, the principles establishing whether the case is actionable and those establishing the expectations that the court imposes on a defendant, remain.

#### **Module Learning Outcomes:**

- Examine the civil law concepts underpinning negligence
- Understand the legal principles of negligence
- Apply the elements of negligence to practice
- Examine case findings giving direction for practice

#### **Topics Covered:**

##### **The Law of Negligence**

At the end of this session you will:

- Relate elements of negligence to practice situations
- Recognise the sources determining standards expected of a professional
- Appreciate circumstances where actions are not deemed liable even if harm occurs
- Explore cases providing examples of professional negligence

##### **Applying the Elements of Negligence for Safe Practice**

At the end of this session you will:

- Understand the legal definition of negligence
- Relate legislation to common law principles of negligence
- Define the elements of negligence
- Examine case findings of negligent Nursing behaviour

#### **Duty of Care**

At the end of this session you will:

- Relate the legal concept of duty to practice
- Understand the rules governing legal and professional delegation of duty
- Recognise situations where there is an actual or potential failure of duty
- Discuss the professional standards that impose duty of care

## **MODULE FIVE: Criminal Law**

### **2 CPD Hours | Mode of Delivery: Face to Face / Online**

It is rare that a health worker “intends” to commit a crime, but it can happen in the course of their work.

Deliberate or reckless behaviours that our society considers “outrageous” or beyond the moral standards of society can be criminal acts and as such, these will be investigated by the police and if sufficient evidence is gathered, be prosecuted in court.

#### **Module Learning Outcomes:**

- Understand the sources of Criminal Law in Australia
- Identify those crimes that may occur in health settings
- Relate concepts of Criminal Negligence and manslaughter to health practice
- Explore those crimes that Nurses need to report

#### **Topics Covered:**

##### **Crimes and Health Care**

At the end of this session you will:

- Understand the policies that underpin Australian Criminal Law
- Define the terms, criminal Negligence, manslaughter and murder
- Explore cases against health practitioners that give direction for practice
- Link legislation governing health where failures in practice are deemed criminal

## **Crimes Against Persons**

At the end of this session you will:

- Examine the role of the Nurse in relation to caring for victims of rape
- Understand the health professional's role in relation to suspected assault and abuse
- Know the law in relation to female genital mutilation
- Appreciate the various state criminal laws that have relevance to practice

## **MODULE SIX: Coronial Law**

### **2 CPD Hours | Mode of Delivery: Face to Face / Online**

Every State and Territory has had a coroner since Federation. Each State had similar legislation governing when, why and how a Coronial Inquest must be undertaken. Inquests are held in around 20 per cent of Coroner's Inquiries, therefore there is a real chance a Nurse may be called to be a witness. This is a source of anxiety as the coronial system, procedures and requirements are relatively unknown.

#### **Module Learning Outcomes:**

- Know the legislation governing the role of the Coroner
- Understand the rules for reporting deaths to the Coroner
- Relate Coronial Inquest requirements to clinical practice
- Recognise the obligations of being a Coronial Witness

#### **Topics Covered:**

##### **Role of the Coroner and Reportable Deaths**

At the end of this session you will:

- Relate legislation governing Coronial Investigations to practice situations
- Understand who in law can verify death
- Link issues of reportable deaths to clinical situations
- Recognise the legal obligations of the Nurse in a Coronial Investigation

##### **Being a Witness in a Coronial Inquest**

At the end of this session you will:

- Understand policies and procedures of Coronial Inquiries
- Apply strategies and preparation for a witness called to an Inquiry
- Identify professional obligations and responsibilities for a Coronial Inquest
- Link coronial findings to practice situations

## **MODULE SEVEN: Children and the Law**

### **1 CPD Hours | Mode of Delivery: Face to Face / Online**

Legislation varies in each state in relation to children and particular laws aimed at providing protection from exploitation, abuse and neglect. Legislation specifies obligations imposed on parents and carers and these laws reflect the United Nations Convention on the Rights of the Child (1989) and many of the principles within that Convention are embedded within child protection legislation.

#### **Module Learning Outcomes:**

- Link the protective and welfare aims of child protection to practice
- Recognise the legislative and ethical obligations health workers undertake
- Explore the dilemmas inherent in protecting children
- Acknowledge the clinical realities of caring for children at risk

#### **Topic Covered:**

##### **Children and the Law**

At the end of this session you will:

- Understand legislation imposing Mandatory Reporting in each state
- Relate legal concepts for minors to issues of consent and confidentiality

- Recognise the differences between federal and state jurisdictions for children
- Apply legal doctrine to emergency and futile situations involving

## **MODULE EIGHT: Aged and Palliative Care**

### **2 CPD Hours | Mode of Delivery: Face to Face / Online**

Everyone is aware of predicted population changes where the majority of Nursing clients will be seniors. For those who currently work within the aged care industry the demands of funding, resources, and client expectations are well understood.

For those working in acute environments there are pressures created by extended stay and lack of community placements. Too often these pressures can create negative attitudes and ill-considered comments that can be interpreted by seniors and their families as discriminatory and unprofessional.

#### **Module Learning Outcomes:**

- Relate clinical and community standards to care of the aged
- Appreciate the range of protections for seniors in Australia
- Acknowledge the problems of equitable care provision for seniors
- Explore duties and ethical requirements imposed on health staff

#### **Topics Covered:**

##### **Ageism and Legislation**

At the end of this session you will:

- Understand some of the social and political expectations for protection of aged Australians
- Appreciate the laws protecting the aged and vulnerable client
- Acknowledge the standards that give direction to Nurses and carers of the aged client
- Relate the expectations of older Australians to current practice

##### **Elder Abuse and Restraints**

At the end of this session:

- Understand the legal and social requirements in protecting the aged in Australia
- Recognise the signs of elder abuse and reporting requirements
- Understand and address causal factors that underpin aggression towards aged clients
- Relate government guidelines for restraint use to clinical practice

## **MODULE NINE: Contracts and Insurance**

### **1 CPD Hours | Mode of Delivery: Face to Face / Online**

The critical contracts that relate to Nursing are those that the client enters into when seeking care and our own contract of employment. Failures to satisfy client care contracts have led to court actions. Confusion about the rights and obligations under legislation and the common law can lead to conflicts over employment and of course dismissal from employment. The requirement under AHPRA to hold personal indemnity insurance is another source of confusion.

#### **Module Learning Outcomes:**

- Introduce legislation that creates legal insurance obligations
- Explain types of professional insurance that exist
- Examine risks of failing to maintain professional insurance cover
- Introduce and explain principles of contracts of work

#### **Topics Covered:**

##### **Contracts and Insurance**

At the end of this session you will:

- Define the rights of employers and employees under common law
- Explore cases identifying breach of contract in care situations
- Understand the types of insurance and legal requirements for practicing Nurses
- Relate the doctrine of vicarious liability to professional insurance requirements

## **MODULE TEN: Mental Health Legislation**

### **1 CPD Hours | Mode of Delivery: Face to Face / Online**

Nurses working in mental health have an extensive understanding of their legal requirements in relation to patient rights and voluntary and involuntary admissions. The legislation in each state is clear about protecting rights and the procedures that must be followed when assessing and treating a mentally ill client, these are not well understood by Nurses outside of the specialty. The legislation giving direction and entrenching client rights will be the focus of this session.

#### **Module Learning Outcomes:**

- Identify legal obligations imposed by legislation
- Explore practice behaviours that meet legislative requirements
- Relate human rights principles to practice situations
- Examine cases which highlight professional failures

#### **Topics Covered:**

##### **Mental Health Legislation**

At the end of this session you will:

- Understand the rules governing assessment and treatment for the mentally ill client
- Relate professional standards to the care and management of the client
- Recognise the legal protections and procedures available to clients
- Explore cases that demonstrate issues that arise in the care of the mentally ill client

## **MODULE ELEVEN: Drug Administration and Practice Errors**

### **2 CPD Hours | Mode of Delivery: Face to Face / Online**

The laws governing drug administration are not always the same as local policies and this can cause frustration and confusion. Further, every Nurse is aware of the risks and problems in medication management. Failures have led to negligence claims and disciplinary actions. Errors are a fact of life and managing them is part of the Nurses' role.

#### **Module Learning Outcomes:**

- Identify legislative and professional rules for drug administration
- Explore clinical practice situations that give rise to confusion
- Relate workplace risks and practices to professional liability
- Examine proposed solutions for risk management in practice

#### **Topics Covered:**

##### **Drug Administration and Cases of Professional Failure**

At the end of this session you will:

- Know the legal rules underpinning drug administration
- Understand the personal traits and system problems linked to errors
- Appreciate the classes of drugs that cause the most severe adverse effects
- Apply current approaches in naming that lessen the risk of administering incorrect drugs

#### **Risk Management**

At the end of this session you will:

- Explain risk, risk management and the context for risk management
- Relate relevant legislation to the processes of risk management
- Develop skills to assess, evaluate and prioritise risks
- Understand the consequences of risk and consider risk treatment options

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