

## Legal and Ethical Issues – Code of Ethics and Standards of Midwifery Practice

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### **Abstract**

Contemporary midwifery practice is characterized by increasing complexities in respect of the health needs of childbearing women, their babies and families as well as increasing uncertainties about what is right and wrong. Midwives can find themselves faced with dilemmas and have to make decisions where there may not be evidence of any robust clinical evidence. It is important that midwife should fully be aware of the legislation and legal framework in which they should practice as accountable practitioners within the context of normal midwifery for which they have been duly trained and have the appropriate expertise.

**Key Words:** Legislation, Statutory Instruments, Dilemmas, Non- Maleficence, Substantive rules and Professional Self- regulation

### **Introduction**

Ethics is often exploring values and beliefs and clarifying what people understand, think and feel in a certain situation, often from what they say as much as what they do – such actions being underpinned by morality. Although the area of ethics is complex and perceived as difficult and daunting, it is a major part of midwifery education and practice and should be seen as a daily tool to support a midwife's decision-making with childbearing women. Being ethically aware is a step towards being an autonomous practitioner: taking responsibility, empowering others and facilitating professional growth and development. The language and terminology, however can be hard to comprehend and need greater explanation. It is important to reflect on these issues and be open and honest about dilemmas faced in practice. A potential area of conflict is that of law, as law and ethics are often seen as complementary to another, yet they can also be placed at opposite ends of the spectrum, either creating overlap or creating conflict. Exploring ethics provides a framework to aid resolution of such dilemmas.

### **Definition**

Legal standards are those standards that are set forth in governmental laws.

Ethics is the knowledge of right and wrong.

A code of ethics specifies rules of conduct to which members must adhere to remain standing with a professional organization. The code of ethics sets forth the values, principles and standards to guide social worker's behaviour.

## **Importance**

It protects the clients against deliberate and inadvertent injury by a nurse.

It protects the nurses also against the suits if she renders right care.

A code of ethics is important because it clearly lays out the rules for behaviour and provides the groundwork for a preemptive warning.

It helps firms and obeying the law and treating people, honestly and firmly.

This promotes employment ethics: safety promotion, health and safe working conditions.

It sets out the minimum duties of a legal practitioner towards the client, and the counter parts in the profession.

It assists in the protection of fundamental human interests like life, liberty, and property.

It spells out the minimum standards of practice.

## **Legislation**

The nursing and midwifery order 2001 is the statutory legislation that currently governs the midwifery profession and endorsed the formation of the regulatory body, the NMC.

Primary legislation is enshrined in acts of parliament, which have been debated in the house of commons and house of lords before receiving royal assent. Such legislation is expected to last at least a couple of decades before revised.

With a pressure on parliamentary time, acts of parliament are frequently designed as enabling legislation in that they provide a framework from which statutory rules may be derived: known as secondary or statutory legislation. All secondary legislation is published in statutory instruments. It can be in theory be implemented or amended much more quickly.

## **The Human Rights Act 1998**

The European convention for the protection of human rights and fundamental freedoms (1951) set out to protect basic human rights. The human rights act was passed in 1998 and came into force on October 2000, since when most of the articles of the convention have been directly enforceable

- The right to life ( e.g. continuing treatment of the life of a severely ldisabled baby).
- The right not to be tortured or subjected to inhumane or degrading treatment (e.g. chaining a pregnant prisoner to a bed during labour would contravene )
- The right to liberty and security ( e.g. safe and competent care during childbirth )
- The right to a fair trial (e.g. civil hearings and tribunals as well as criminal proceedings )
- The right to respect privacy and family life (e.g. supports a women’s right to give birth at home )

## **Legal Frame Works Rules and Regulations**

Each midwife must meet standard 17 of the standards for pre-registration.

Midwifery education which stipulate the competencies and essential skills cluster required of all midwives .

### **The Code: Standards of Conduct, Performance and Ethics for Nurses and Midwives**

The code (NMC 2008) provides the registrant with the foundation of good nursing and midwifery practice and is a vital mechanism in safeguarding the health and wellbeing of the public. It highlights four standards that the registrant must clearly demonstrate through their professional practice in order to meet the public trust.

These four standards are further expanded upon in code and include gaining consent, adhering to provisional boundaries, working effectively as part of it and delegation appropriately to others. Keeping in knowledge and skills up to date, maintaining clear and accurate records and upholding the reputation of the profession all times.

A registrant who is not practice according to these standard could find out themselves before the NMC's practice committees with a suitable suspension from practice and or removal from professional register. The increase in social networking has necessity of further guidance from the NMC (2012) in that concerned online should be judged in the same way as it conducts in the real world.

### **Midwives Rules and Standards**

#### **Level One: Judgements**

Judgements are usually readily made based on information on individual gains. Such judgements may have no real foundation except the belief of the individual who made it. They may therefore be biased and not necessarily well thought or based on all the available evidence. What informs a judgements is often linked to personal values and beliefs, societal influences as well as experiences of similar past events. It is important that midwives reflect on past judgements to consider is in prospect they were well founded or based on personal bias or prejudice.

#### **Level Two: Rules**

Rules governs our daily lives and are determined by the society or culture in which we live in terms of ethics. Rules are what guide the midwives practice and control their actions. According to Beauchamp and Childress (2012) rules comes in different forms,

Substantive rules : Cover issues such as privacy, confidentially or truth telling.

Authority rules : are determined by those in power and enforced on a country or section of society.

Procedural rules : define a set of course of action or line that should be followed.

### **Level Three: Principles**

There are four main principles which are usually applied specifically within health care and midwifery practice.

- **Respect for autonomy:** respecting another's rights and self-determine course of action.
- **Non-maleficence:** No harm or cause no hurt.
- **Beneficence:** Compassion, taking positive actions, good or balance the benefits.
- **Justice:** To treat everyone fairly and as equal. This principle also encompasses fair access for all to the same level and options of health and maternity services, including place of birth.

### **Level Four: Ethical Theories**

There are a number of theories that could be applied to healthcare and midwifery practice, example, ethical relativism, feminism and normative ethical theories are at either end of the spectrum. The two main normative ethical theories that are at either end of the spectrum are Utilitarianism and deontology.

### **Litigation**

This is the term used for the process of taking a case through the courts, where a claimant brings a change against a defendant to seek some form of address. The National Health Service Litigation Authority (NHSLA) manages litigation and other claims against NHS in England on behalf of member organizations and is responsible for providing advice on human rights case law and handling equal pay claims.

### **Negligence**

It is recognized that the most significant claims in obstetrics arise from birth trauma resulting in cerebral palsy. These are usually based on the allegation that there was negligence on the part of the health professionals involved in the intrapartum care and management, resulting in fetal asphyxia and consequently neurological damage to the baby.

### **The Statutory Supervision of Midwives**

The purpose of supervision of midwives is to protect women and babies by promoting the standards of midwifery practice. The philosophy of midwifery supervisions and the standards it develops reflect the key themes of clinical governance described in NHS first class service. These themes are

- Professional self-regulation
- Clinical governance
- Life-long learning

## **Standards of Midwifery Practice**

- Promotes health and wellbeing through evidence based midwifery practice
- Engages in professional relationships and respectful partnerships
- Demonstrates the capability and accountability for midwifery practice.
- Undertakes comprehensive assessments.
- Develops a plan for midwifery practice.
- Provides safety and quality in midwifery practice.
- Evaluate outcomes to improve midwifery practise.

## **Preliminaries**

Rule 1: Citation and commencement

Rule 2: Interpretation.

Cites the authority by which the rules are made and the date they come into effect.

Provides statutory definitions of key terms and titles used in the midwives rules in order to leave no doubt as to intent of the term.

## **Requirements for Practice**

Rule 3: Notification of intention to practice

Rule 4: Notifications by local supervising authority.

States that all the midwives must notify the LSA when intending to practise in its area and explains the process for doing this

States what the LSA must publish in relation to practise process

## **Obligations and Scope of Practice**

Rule5: Scope of practice

Rule 6: Records

States that standards expected of a practising midwife.

Sets the requirements for the transfer and storage of the midwifery records.

## **Supervision and Reporting**

Rule 7: The local supervising authority midwifery officer (LSAMO).

Rule 8 : Supervisors of midwives.

Rule 9 : LSA's responsibilities for supervision of midwives.

Rule 10: Publication of LSA procedures.

Rules 11: Visits and inspections.

Rule 12: Exercise by a LSA of its function.

Rule 13: LSA reports.

States that standards required for the appointment, role and remit of the LSAMO.

States the standards required for the appointments of SoMs.

Prescribes the requirements for the provision of supervision to all practising midwives.

States that requirement for the LSA to publish its procedure in related to its adverse incidents, supervisory investigations and complaints. It also gives detailed guidance on the investigation process and potential outcomes.

Prescribes the way that visits and inspections may be carried out by the NMC, LSA and SoM. This includes the requirements for the inspection of a midwife's place of work.

Requires the reporting of complaints/concerns about a LSAMO or SoM to be reported to the NMC.

States the requirements for the LSA to submit reports to the NMC.

### **Action by the Local Supervising Authority**

Rule 14 : Suspension from practise by a LSA.

Prescribes the process for the suspension of midwife by the LSA.

### **Key Words**

**Legislation** - The process of making or enacting laws.

**Statutory Instruments** - A government or executive order of subordinate legislation

**Dilemmas** - A situation in which a difficult choice has to be made between two or more alternatives.

**Non-Maleficence** - Non-harming or inflicting the least harm possible reach Beneficial outcome.

**Substantive Rules**- It refers to the body of rules that determine the rights and Obligations of individuals and collective bodies.

**Procedural Rules**- It is the body of legal rules that govern the process forDetermining the rights

of parties.

**LSA Procedures-** Latent semantic analysis is a technique in particular distributional semantics, of analysing relationships between a set of documents and the terms they contain by producing a set of concepts related to documents and terms.

**Professional self-Regulation-** It recognizes the maturity of a profession, it honours the special skills, knowledge and experience that a profession possesses.

## Conclusion

This includes legal and ethical issues, systems, legislation, human rights acts 1998, legal frames: rules and standards, standards of conduct, performance and ethics for nurses and midwives. Midwives and standards, judgements, rules, principles, ethical theories, litigation, negligence, ethical issues and midwife, the statutory supervision of midwives. Standards of midwifery practice preliminaries, requirements for practice, obligation and scope of practice, supervision and reporting, action by the local supervising authority. Nurses render health services to the individual, the family, and the community, and co-ordinate their services with those of related groups.

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