**Duty of care**



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Nurses and midwives have both a legal and professional duty to care. A court of law could find a nurse or midwife negligent if a person suffered harm because they neglected to care for them adequately. Professionally, the NMC's Conduct and Competence Committee could also find them guilty of misconduct and impose one of the following sanctions

* Issue a caution for a specified period of between one and five years
* Impose conditions of practice for a specified period not to exceed three years
* Suspend registration for a specified period of time not to exceed one year
* Remove the person from the Register

Lord Atkin defined the duty of care when he gave judgement in the case of Donoghue v Stephenson (House of Lords) (1932). He said that:

*"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in the law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."*

**How circumstances can affect your duty of care**

It would be the responsibility of the Conduct and Competence Committee, and possibly the courts where a referral has been made to them, to decide whether a nurse or midwife failed in their duty of care. When making such decisions they must consider whether the nurse or midwife acted reasonably in all circumstances.

The following examples show how the duty of care changes according to the circumstances. Each example features a skilled adult intensive care nurse.

**Example 1**

The nurse is on duty in the intensive care unit when a person suffers a cardiac arrest. Here, it is reasonable to expect the nurse to care for the person as competently as any experienced intensive care unit nurse.

**Example 2**

The nurse is walking along a hospital corridor and finds a woman completely alone giving birth. In this situation, it is not reasonable to expect the nurse to care for the woman as a midwife would. But it is reasonable to expect the nurse to call a midwife or obstetrician and to stay with the woman until appropriate help arrives.

**Example 3**

The nurse is walking along a street and comes across a person injured in a road traffic accident. In this situation, the nurse does not have a legal duty to stop and care for the injured person. But if she does, she then takes on a legal duty to care for the person appropriately. In these circumstances, it is reasonable to expect her to care for the person to the best of her abilities, using her nursing knowledge and skills and within her own level of competence. Although the nurse has no legal duty to stop and give care, she does have a professional duty. The code places a professional duty upon her at all times. However, in this situation it could be reasonable to expect the nurse to do no more than comfort and support the injured person and to reduce the potential for further harm.

**What is reasonable?**

The Bolam Test is currently the standard by which the courts in England and Wales assess doctors' clinical practice. However, the principles of the Bolam Test can be applied to examine the actions of any professional person. Similar standards operate in Scotland and Northern Ireland.

*"The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill at the risk of being found negligent… it is sufficient if he exercises the skill of an ordinary competent man exercising that particular art."*

The case of Wilsher v Essex AHA (1988) sets the standard of reasonable care to be expected of students and junior staff. The standard is that of a reasonably competent practitioner and not that of a student or junior.

Nurses and midwives have a duty to ensure that the care is carried out at a reasonably competent standard. Essentially a nurse or midwife remains accountable for the delegation of the work and for ensuring that the person who has had the work delegated to them is able to do it. The code provides principles, which can be applied to any situation. If these principles are followed, nurses and midwives will be able to carry out their legal and professional duty of care.

**Withdrawing care to protect the public and yourself**

In circumstances where a nurse or midwife may consider withdrawing care, they are advised to discuss this with their managers, the person they are caring for if appropriate and wherever possible and their family.

There should be local protocols and policies outlining the nurse or midwives responsibilities when considering withdrawing care.

Withdrawing care may be considered in some of the following situations:

* Where the nurse or midwife fears physical violence
* Where there are environmental health and safety hazards involved in providing care
* Where the nurse or midwife is experiencing sexual or racial harassment.

Any decision to withdraw care has to be considered very carefully and all other avenues must have been tried and exhausted prior to taking such a decision. Care can be suspended until concerns are discussed with the multi-disciplinary team. The decision to withdraw care should always be taken following discussion with other members of the health care team.

In areas of practice where violence may occur more frequently there must be protocols in place providing guidelines for staff on how to deal with such situations. Appropriate training and on-call support arrangements should also be available in these environments. Where a decision to withdraw care is taken, a clear and accurate record of the events leading up to this should be made in the person's notes.

Withdrawing care in situations where it is felt that registration could be potentially compromised due to abnormally high caseloads, or poor staffing and skill mix levels, would not normally be considered reasonable. In such situations, it is strongly advised to put concerns in writing to managers, highlighting the areas of conflict and recommending possible solutions. Nurses and midwives are reminded that they are accountable for their actions and omissions.

In all areas of care there should be protocols in place to help nurses and midwives to protect themselves, their colleagues and the public.