CHAPTER 1

Beginning to understand the sources of standards and rules

LEARNING OBJECTIVES

- To appreciate that law, regulation and ethics are all sources of standards and rules.
- To be able to find examples of laws, codes, policies and regulations.
- To be able to explain the importance of active reflection on conduct given expected standards.
- To understand the importance of shared objectives and specific roles in a health care team.
- To appreciate integrated standards in health care record keeping.

KEY TERMS

assault
autonomy
battery
beneficence
bioethics
code of conduct
ethics
false imprisonment
good
health care worker
health practitioner
human rights
ideals
integrity
jurisdiction
justice
law
legislation
medical ethics
morals
non-maleficence
norms
professional
professional code of ethics
regulation
responsibility
rules
skill
standards
values
virtue

Aiming for an integrated understanding from the start

The approach in this text in explaining the standards that underpin working within health settings is user-friendly, pragmatic and practical. As you work through the chapters and companion readings and exercises, you will start to feel that law, ethics and regulation are not as complex and unwieldy as they seemed at first, and you will be equipped with a conceptual framework to understand more about standards and rules as you train and work in the health sector.

REFLECTION POINT

On your marks, get set

How do you feel at the start of this learning on law, regulation and ethics and the standards and rules that will affect your professional practice? How familiar are you with any of these terms?

Make a note now in your portfolio, so that when you finish the course you will be able to look back to how you felt at the start of your reading and learning, and you will realise how much your own knowledge and understanding has grown. As you will read in this very first chapter, you should feel confident that you will have many experienced guides coming along with you on the journey.

standards
Accepted benchmarks that are defined and available.

law
Body of formal and customary rules and principles, used to regulate interactions in a community.

regulation
Standards, rules, restriction and procedures for social control and management in specific contexts.

ethics
Reflective process of analysing and examining moral issues and problems.

Your responsibilities as a health care professional are partly defined and informed by law, regulation and ethics. Some of your responsibilities are **standards** to uphold that are expressed in rules, codes, guidelines, policies and legislation. We begin by exploring how such standards were derived. Many examples and excerpts appear in this text; as you work your way through the text, you will become more comfortable with the diverse sources and styles of those standards. Examples of restrictions, standards and rules are sourced from a variety of legal, ethics, administrative, regulatory and policy arenas.

Law and **ethics** have quite a lot in common. As scholarly and intellectual endeavours with practical application, their common purpose is to facilitate fair and reasonable ways to live with others in a society. The principles in law and ethics are intended to be applied in practical contexts. Law and ethics inform and shape **regulation**.

The purpose of regulation is to set out operational restrictions, standards and rules to be applied in practice, in specific contexts. Regulation provides the bulk of practical day-to-day guidance for health care settings, for both institutions and the health care workers. Regulation also guides the way departures from acceptable standards are assessed. Discussion of the expected standards—and departures from those standards—highlights what society expects of both institutions and persons engaged in health care when the standards are applied in practical contexts, in real life.

Our philosophical great-grandparents left us forms of reasoning as their legacy, as well as the benefit of their discussion about how to live in a society in a peaceful and orderly way.

Ethics and law are their children, who in turn gave us the practical codes and laws in each nation-state. The youngest in the family tree, the next and current generation, are the lively and dynamic regulation-setters, who try to make living together fair and workable in the current day. Remembering the vast history and deep thought that has gone into setting standards will help you to understand how important it is to live up to the expected standards in your work.

INTEGRATED LEARNING AND PRACTICE

Is there a fundamental rule to consider before treating a patient?

Yes, there is a fundamental rule to consider. Before you can proceed with your part in any therapeutic encounter, consider the following:

- Law prompts you to consider if you have the person's agreement—in law, to touch without agreement can amount to **assault** or **battery**.
- Ethics reasoning frameworks prompt you to consider if you have the person's agreement to proceed, given the emphasis of respect for the person and their autonomy.
- Regulations support the application of these principles in practice. For instance, setting out what to do before proceeding with treatment, such as how to document the process of gaining informed agreement on a consent form.

assault
Physical interference or causing fear of physical interference to a person.

battery
An act of physical interference or force applied to a victim's body without consent. Battery is an old term. Many modern laws combine battery in the broader concept of assault, which includes the threat as well as actual force or touching.

It would be a good idea to reread Chapter 1 every now and then, when you want to look back over the general explanations of law, regulation and ethics.

Jurisdiction and laws

Law is an authoritative system of norms that can be written or unwritten, and which govern a society and can be enforced with sanctions (Mann, 2013, p. 432). It represents the basic duties of citizens and the accepted lower limits of their conduct. The law is a contemporary statement of the standards that you are expected to maintain in your dealings with the social institutions of your state and country, and in your dealings with others in personal interactions. Different countries and states define and expect different basic responsibilities from their people. In addition to the basic responsibilities owed to others under law, there are also special responsibilities for professionals under law.

Understanding a little about the legal system in your state and country will help you to more fully appreciate the legal requirements that apply to you. Our legal system is made up of:

- legislative instruments—which includes Statute law and related regulations
- case law—which includes civil or common law and criminal law court decisions.

Statute law

jurisdiction
Scope of authority and power to set and enforce laws and regulatory schemes.

Statute law is legislation that has force because it has been passed into law by the government given a particular **jurisdiction**. Jurisdiction is a term for legal authority or power (Mann, 2013, p. 420). It represents the collected formally stated customary rules and principles that are used to regulate interaction within a community. The power is limited, as it can only be relied on to set rules and standards in a specific setting or context. Together, the power and the reach or scope of application of the power under that authority form the jurisdiction.

legislation
Statutes and other rules in related instruments that are formally approved by parliament.

Statute laws evolve when elected government representatives pass new pieces of **legislation**—or amend existing legislation—to try and correct an issue that has been brought to their attention. The head of state (e.g. the monarch or representative) then approves the legislation so that it is in force. These statutes and related regulations are meant to guide everyone's conduct as they live within the society.

Case law

A tradition from English law dating back to 1584 that is in place in our legal system is that legislation also provides structure to a law court's considerations (*Heydon's Case* (1584), as cited in Cook, Creyke, Geddes & Hamer, 2009, p. 233). So statute law and case law work together in a practical way to set and maintain standards within society. Statutes guide individuals in their conduct and they also guide the courts when resolving disputes or redressing wrongs that have been committed. Judges' wisdom on fair dealings with each other in society is available in their judgments, which collectively forms the case law. In turn, case law principles in important judgments inform the further development of statute law.

Jurisdiction

Sovereign states have a specific geographic territory and a permanent population. This is their jurisdiction. They can make their own laws to 'rule' over their own people and also all the people present in their own geographic territory (Crawford, 2012, p. 452). The same principle applies to areas within a country, if the areas are recognised as being able to set their own laws.

So, the state and territory governments of Western Australia, South Australia, Victoria, Tasmania, New South Wales, Queensland, the Australian Capital Territory and the Northern Territory are able to pass laws on many matters that apply within their boundaries.

For instance, the state and territory governments pass laws that help them to run public hospitals and implement service standards. The states existed before Federation in 1901—it was was the decision of the states to form a Commonwealth Government so that they could collaborate on practical matters, trade and foreign dealings. Given the agreed powers under the Constitution as a Federation, the Commonwealth Government then assumed the right to pass laws over certain matters, such as taxation and immigration. It can also rely on these constitutional powers to pass laws on related or incidental matters (*Commonwealth of Australia Constitution Act 1900* (Cth) (the Constitution), section 51). You can look up the full list of matters that the Commonwealth can pass laws on by reading section 51 when you look up the Constitution: <www.legislation.gov.au>.

As stated in section 5 of the Constitution:

> This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

The Federal Government funds and regulates Medicare, a universal health system, through a series of statutes including the:

- *Medicare Levy Act 1986* (Cth)
- *Human Services (Medicare) Act 1973* (Cth)
- *Human Services (Medicare) Regulations 1975* (Cth).

The Commonwealth is able to pass laws on the funding of medical services because the Constitution provides, in section 51(xxiiiA) that the Commonwealth can pass laws for the peace, order and good government of the Commonwealth with respect to:

> The provision of maternity allowances, widows pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances.

This power was added by amendment in 1946, well after Federation. This shows that the Constitution is a live document that can be amended from time to time so that our society is governed appropriately for its contemporary context. Medical services may include 'healing by drugs, surgery and manipulation'. Further laws and regulations on the way services are delivered by institutions such as public hospitals is a matter for the states and territories, unless additional powers under the Constitution are relied on (see McMillan, 1993, p. 34).

INTEGRATED LEARNING AND PRACTICE

How do providers get Medicare Provider Numbers?

A Medicare Provider Number is the mechanism for the partial reimbursement or contribution by the community to the cost of medical services that individuals receive through the Commonwealth Medicare scheme.

Medical practitioners apply to a Commonwealth government department (Human Services, Health) for a provider number for the location of their medical practice or service provision. Practitioners need to be able to show that they are eligible—that they have the correct qualifications and the required public hospital training. Practitioners are then able to bill certain item numbers in their own right, if the services are within the scope of their practice.

Other providers can also apply for provider numbers. For instance, registered psychologists and accredited mental health social workers can apply for provider

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numbers, if they have evidence from their own assessing authority that they are competent to provide certain services.

The Health Insurance scheme, including the *Health Insurance (Allied Health Services) Determination 2011* (Cth), supports the consideration of an individual's training and competence by a recognised assessing authority. This regulatory scheme provides public protection and enhances quality and safety—because only those who are appropriately trained and assessed by a recognised authority as being sufficiently skilled are then able to bill patients or Medicare directly for those item number services.

REFLECTION: LEGISLATION DISCOVERY

Understanding which governments' laws may be applied to you is important as a first step before you look for derived regulations and standards and rules.

You can get some idea of the vast number of legislative instruments that regulate interactions in health and health care by searching 'health' as a key term in your own jurisdiction. You can look at the listed legislative instruments by searching the Federal Register of Legislation for the Commonwealth legislation (legislation.gov.au) and then your state or territory jurisdiction legislation:

- legislation.act.gov.au
- legislation.nsw.gov.au
- legislation.nt.gov.au
- legislation.qld.gov.au
- legislation.sa.gov.au
- legislation.tas.gov.au
- legislation.vic.gov.au
- legislation.wa.gov.au.

1 Browse your lists to see the wide range of topic areas that have been considered in your jurisdictions as part of setting standards for health and health care.

2 Note your reaction to the list you have identified. Understanding your responsibilities starts with an appreciation of the vast scope and detail of legislation that could be relevant to your field of professional work.

3 Choose one statute, an Act, and look at the 'object' or purpose section of your Act. This is in an early section of every instrument, and reading it first is essential—it guides the proper interpretation of the following detailed sections of the Act.

Research skills: Legislation

Kay Tucker, Law Library Manager, Monash University

As a law librarian in a large university, I see many students from Law and other faculties who need to find the law applying to a particular topic. I usually recommend that they start by reading a text, legal commentary service or journal article that summarises the law and identifies the relevant Acts and cases. Reading the work of an expert who has done this initial work for you could save you a lot of wasted research time. One such legal commentary service in the Health Law area is the *CCH Australian Health and Medical Reporter*. Find other texts via your library catalogue and databases.

If you know the title of the Act that regulates the issue you're researching, then you can easily find it on the official government website. However, these sites are not easy to search deeply. For example, if you are trying to find the Victorian Act that includes the Health Privacy Principles, searching for the occurrence of these words in the current Acts contained in the 'Victorian Law Today' section of the official site results in a number of Acts. You may need to go to a few of them to read the terms in context, before looking at the *Health Records Act 2001* (Vic) where the Principles are included as Schedule 1.

Rather than search each government website separately, you can use a subscription-based database to help you find legislation from all Australian jurisdictions. The main databases are LawNow (LexisNexis), LawOne (TimeBase) and Lawlex (SAI Global). Lawlex provides a freely available browse facility to help find legislation related to particular topics. Selecting the topic 'Health' initiates a number of subcategories such as Aged Care, Medical Practice and Treatment, Mental Health, Privacy, and Regulatory Bodies. From there, you will see a list of the relevant Acts and Regulations for the selected jurisdictions. For example, if you're interested in the privacy of medical records, and you select the Privacy category, you may need to look at a few Acts, including the *My Health Record Act 2012* (Cth) and the *Privacy Act 1988* (Cth).

Once you have an Act, how do you know which provisions (or sections) of an Act apply to your problem? You can look through the Table of Provisions at the start of the Act—but you will often need to read a number of sections to place them in context. You can also use the search facility in AustLII <www.austlii.edu.au>, a free web database that provides access to Australian legislation, where search results are listed at the section level. For example, if you select to search Consolidated Commonwealth Acts and type in Privacy NEAR Protection NEAR Health, a top result is the *Privacy Act 1988—section 95A Guidelines for Australian Privacy Principles about health information*. You can link through to read the section. However, if you use or reference the Act, always go back to the official government website as the authoritative source.

More tips for researching:

- Make sure that you are looking at the most current version of the Act. At the top of the Act under the Short Title, you will see wording such 'includes amendments up to …' or 'Authorised Version incorporating amendments as at'. One of the hazards of googling an Act is that you may link through to an older version.

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- If you want to see what the amendments to an Act have been over time, look at the Endnotes of the Act, where you will find the Table of Amendments or Amendment History. You may then need to look at the Amending Act to understand the change. For example, the *Privacy Act 1988* (Cth) was amended by the *Privacy Amendment (Notifiable Data Breaches) Act 2017* (Cth). Lawlex can also help you identify changes to Acts and the dates the changes commence.
- Look at the Explanatory Memorandum (published along with the Bill) to understand the meaning of an Act. Read the Second Reading Speech for the Bill to learn more about the context and intent of the Bill. These 'Extrinsic Materials' are valuable research sources, available on the Parliamentary websites and legislation databases.

References

Australasian Legal Information Institute: <http://www.austlii.edu.au/>.

Bates, Philip, *Australian Health and Medical Reporter* (CCH Australia, 2007).

Victorian Legislation and Parliamentary Documents: <http://www.legislation.vic.gov.au/>.

Jeremy Bentham, one of the famous scholars in law and philosophy, is an example of a jurist, philosopher and social reformer who promoted a particular view of how law and ethics are related. An early utilitarian, Bentham espoused the principle of achieving the greatest good for the greatest number. The utility he concentrated on was felicity, or happiness. The means to pursue felicity, Bentham thought, were reason and law. He thought that the stability of law would provide the structure to achieve happiness. He felt that this fundamental aim should be recognised in law, and he set about suggesting legal and societal constructions that would achieve it. His concern was at a societal and governmental level (Honderich, 1995, p. 85). Bentham's utilitarianism was a grand plan to express societal goals and limits in a legal system.

REFLECTION: LAW AS A BASIC STANDARD

You have already thought about the law on assault, the ethical importance of autonomy, and the regulations about gaining permission to treat—which applies to all therapeutic interactions. The standard is that you should always ask for permission before touching a patient.

To begin examining what the law could mean for you in a practical sense, and identifying basic standards you should be mindful of in your interactions in your community, try the following exercise.

1 Look up a statute in your jurisdiction, and read a section that sets out a legal rule about required action or unacceptable conduct. You could look up tax evasion, or

the definition of assault in a state or territory Criminal Code or Crimes Act, or perhaps check on whether driving without a licence is illegal, or another issue you choose.

2 Consider if that legal rule promotes stability for the jurisdiction and felicity in the people who live within the jurisdiction.

The law is an empowering force in health care. Society uses laws to give professions authority and power to define standards of knowledge and skill in their profession. Laws can be relied on to constrain professionals if the appropriate standard is not met.

The state and territory governments can seek Commonwealth Government assistance or co-ordination at times. States have sought Commonwealth assistance to coordinate nationally consistent regulations in relation to registration for registered health professionals, who may use the title 'practitioner'. The Australian Health Practitioner Regulation Agency (AHPRA) is a national agency that holds the registers of health practitioners on behalf of national boards. States and territories agreed to pass state laws that are broadly consistent to enable this coordination, the *Health Practitioner Regulation National Law 2009* (Cth), so that the law has force in their own jurisdictions (AHPRA, 2017). There are some minor variations between the state and territory legislative instruments, which collectively put in place the practical objectives agreed between all the governments.

Currently in Australia practitioners in the following professions are subject to specific registration requirements, which is set out in legislation:

- Aboriginal and Torres Strait Islander health
- Chinese medicine
- chiropractic
- dental
- medical
- medical radiation practice
- nursing and midwifery
- occupational therapy
- optometry
- osteopathy
- paramedicine
- pharmacy
- physiotherapy
- podiatry
- psychology.

The standards expected of those registered health care practitioners is also partly defined by legislation. The National Boards of those professions can set codes of conduct and ethics for their members and, under the National Law, these codes have legal force as appropriate standards for professional conduct or practice. (For instance, see *Health Practitioner Regulation National Law 2009* (Vic), sections 38–41.) The legislation also sets out the process for investigating and considering potentially unsatisfactory professional conduct. Some provisions in the National Law also apply to health services provided by unregistered providers—for instance, prohibition orders that prevent persons who have lost their registered status from working in certain health care service roles.

health care worker Person working in health service delivery who is not registered as a health practitioner.

health practitioner Health care professional who is registered under the Health Practitioner Regulation National Law.

Some uniform conduct standards are also being developed for **health care workers** who are not regulated as 'registered **health practitioners**', as they are not registered under the AHPRA regulatory scheme. However, some professionals may be referred to as 'unregistered health practitioners' in some states. A *National Code of Conduct for health care workers (NCC)* (Coalition of Australian Governments, 2015) is available for states and territories to formalise through their own laws. In addition, abiding by the NCC may be set as a requirement of working in certain settings, such as under nationally funded schemes. Endorsed by the Coalition of Australian Governments (COAG), the purpose of the National Code is to encourage consistent minimum requirements, so that all unregistered health care workers who provide a health service can be held accountable to those standards. A prohibition order could be issued if a serious risk to public health and safety would be posed if that worker continued to work in health service care roles (Coalition of Australian Governments, 2015).

Also, all the normal municipal civil and criminal laws on acceptable conduct apply to all health care workers and registered health practitioners, just as they do to all other unregistered health care professionals and support workers in the health care sector. This includes social workers, counsellors, assistants in nursing, disability and aged care support workers, infection control and cleaning staff, reception staff, information management and information technology workers, public health unit staff, dieticians, food preparation staff, and many more.

International agreements

There are many international commitments that are relevant to health and health care. These are most commonly expressed in treaties, declarations and conventions as agreements to uphold fundamental rights and principles.

human rights Basic rights, thought to be due to all human beings.

The United Nations has issued numerous **human rights**, civil and political rights and economic, social and cultural rights documents on behalf of its member states, which together are known as the International Bill of Human Rights. You could go to the United Nations website <www.un.org> for documents such as the:

- *Universal Declaration of Human Rights, 1948*
- *International Covenant on Civil and Political Rights, 1966*
- *International Covenant on Economic, Social and Cultural Rights, 1966*.

There are optional protocols that support these documents, and these are publicly available through the United National Office of the High Commissioner for Human Rights <www.ochr.org>.

Some of the rights to be protected as human rights are:

- rights to life
- right to freedom from fear
- right to self-determination
- right to be able to pursue one's own economic, social and cultural development
- right not to be detained unreasonably.

There is a proviso that the rights should be protected unless infringement of the rights is protected by law and restriction of the right is reasonable and necessary and proportionate to the purpose of the restrictive law (Australian Human Rights Commission, 2017).

In international law, countries are referred to as member states. Each member state can choose to make agreements with other states. They must be able to demonstrate the stability of their government, so that others can rely on them to have the capacity to enter into such international agreements—and also to live up to those agreements (Crawford, 2012, p. 115). This is a broader commitment than specific trade agreements that are negotiated and made between states, so that fair trading can be conducted between those two states.

If a member state chooses to be party to an international agreement, a representative signs the agreement, and the agreement is then ratified, which carries with it an obligation to explain to the whole international community how the commitment is being put into action. Each state translates the principles of the agreement into practice in its own geographic territory as it sees fit, because each state has the exclusive jurisdiction—or right—to legislate and regulate within its territory (Crawford, 2012, p. 452).

The absolute right not to be subjected to cruel, inhuman or degrading treatment is set out in the *International Covenant on Civil and Political Rights* (ICCPR): 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation' (United Nations, 1966a, Article 7). The ICCPR was ratified by Australia in 1975.

As you will read in Chapter 7 'The limits of care', our ethics approval requirements and local institution governance processes for health and medical research safeguard the commitment that Australia has made to the international community.

In 2017, the Australian Government also recommitted to ratification of the United Nations *Optional Protocol to the Convention Against Torture and Other Cruel and Degrading Treatment or Punishment* (United Nations, 2002; Australian Human Rights Commission, 2017). This Optional Protocol obliges member states to monitor places of detention in order to prevent violence and abuse. This will arguably include mental health facilities and other secure residential facilities where people with disabilities may be living.

INTEGRATED LEARNING AND PRACTICE

Why is the restraint or restriction of patients problematic?

Promoting human dignity and human rights and freedom is expressed as an international commitment in the *Universal Declaration on Bioethics and Human Rights*. The Declaration refers to collective responsibility to promote health and social development; respect and integrity of individuals; and protection of the vulnerable in health care and research contexts (United Nations Educational, Scientific and Cultural Organization, 2005).

Keeping someone in an environment, either directly or negligently, without their consent, or without lawful or reasonable reason to act without their consent, can

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false imprisonment Unlawful physical or psychological restraint of freedom, including detention.

amount to **false imprisonment**, if the person reasonably feels they have no reasonable means of escaping from that environment.

The area of law called torts law provides the case law principles on false imprisonment, as torts law protects the freedom of movement of a person (Balkin & Davis, 2013, p. 49). You will read more about torts law in Chapter 3. Knowing you have lost the freedom of movement is the injury that is the subject of the tort, but knowing the freedom has been lost is not always required—for instance, if someone is locked into an environment while they are asleep, the containment has still occurred.

So as not to cause injury to this freedom, consent to retaining someone in an environment is presumed to be essential, and there are only rare instances when authorised consent is not required. Following the legal and regulatory provisions before retaining a person in an environment are crucial to acting lawfully. For instance, if you think someone is a danger to themselves or others, a person can be 'scheduled' to remain in the care environment.

Society sets out what a reasonable infringement of a person's freedom is, and the type of circumstances that justify the curtailing of rights, and provides an authority with the power to provide that consent. The term 'schedule' means that the provisions of the regulation or 'schedule' have been properly applied to make detaining the person lawful. You will read more about this in Chapter 7.

If any restriction of a patient is to be used against their will, for their own safety or the safety of others, then only the least restrictive option reasonably available is lawful. Policies support the prevention of disturbed behaviour, or minimising the disturbed behaviour episode, and rarely using restrictive practices—for instance in mental health and aged care. While the use of restrictive practices has declined, a recent report states that more work is needed in the disability sector (Melbourne Social Equity Institute, 2014). Quarantine restrictions of liberty are not false imprisonment of a person provided the proper procedures are followed so that the detention is lawful.

International agreements underpin many other more routine aspects of safeguarding basic rights and promoting the best health possible for all people. A practical example of joint action to enhance health is the current multilateral *Agreement to Ban Smoking on International Passenger Flights* (Multilateral agreement, 1994), which Australia implemented soon afterwards in its own legislation through the *Transport Legislation Amendment Act (No 2) 1995* (Cth) and *Air Navigation Regulations (Amendment) 1996* (Cth) *(SR No 113)*.

To understand the obligations that are derived from international treaties, declarations or conventions in your jurisdiction, you can check whether a member state has:

- become a signatory to the agreement
- ratified the agreement in specific terms, or varied some terms
- put in place any regulation or legislation that gives legal effect within its jurisdiction to the commitment.

REFLECTION: INTERNATIONAL OBLIGATIONS

Look up the Australian Treaties Database, which is hosted by the Australian Government Department of Foreign Affairs and Trade (DFAT) at <www.info.dfat.gov.au/treaties>.

1 Find out when Australia signed, and if and when Australia has ratified some of the other international Declarations and Conventions and Agreements.

2 Also on <www.info.dfat.gov.au>, see which legislation is listed as giving effect to the agreements, and find up-to-date information on the ongoing policy work towards ratification or implementation of Australia's obligations under these agreements.

3 Note your reaction to the list you have identified. Did you notice any of these legislative instruments in your earlier search?

Ethics reasoning traditions

Ethics is a shorthand term for the process of analysis and derivation of basic values and objectives, norms or standards, and reasoning to identify optimum aims or objectives of thoughts and actions, standards, and behaviour. The essence of ethics lies in a process of debate and thought and reflection, either on an individual or group basis. It is the process of analysis as much as the position that is argued, and that is the subject of ethics writings and discussions.

Ethics helps you to decide what to do in routine and complex or difficult situations. It acts as a guide, and a reasoned 'voice'. Thinking and reflecting is the hallmark of ethics—as it is an active process. It is a tool that is meant to be used in practical situations. It helps you to reflect on real-life issues, and it is a process that can be applied to real concerns and situations as they unfold.

Ethics in health contexts is sometimes simply called 'ethics'; at other times it is called 'bioethics', or 'medical ethics'. You may like to choose a definition of ethics that you understand best from the following options, which were crafted by experts:

- ethics—'ways of understanding and examining the moral life' (Gillon, 1986, p. 2)
- **bioethics**—'a popular contraction for "biomedical ethics", which is the study of moral value in the life sciences and in their clinical application' (Moreno, 1995, p. 4)
- **medical ethics**—'the analytical activity in which the concepts, assumptions, beliefs, attitudes, emotion, reasons, and arguments underlying medico-moral decision making are examined critically' (Gillon, 1986, p. 2).

There is an impetus in ethics to aim higher than the basic minimum of social responsibilities. The common process of the reflection is that **moral** issues are identified and examined. To some people, moral reflection means to reflect on a lesson that has been handed down in significant religious texts, to strive to distinguish between right and wrong, and act

bioethics
Reflective ethics process applied to the health care context and life sciences.

medical ethics
Specific term for ethics in the medical and biomedical context.

morals
Significant lessons prompting reflection to identify virtuous, right, or acceptable course of conduct.

accordingly, given that lesson. It can also be a practical lesson learnt from past experience and reflection, again reflected on in terms of significance and importance. In this text, the word *moral* is used in a broad sense to mean a reflective examination of values and objectives, including reference to lessons, with an examination of the implications of thought and action for oneself and others.

For centuries, philosophers have been motivated to understand and explain the process of judgment and reflection in a moral being. Some philosophers have concentrated on a categorical imperative (or law) that must be followed, and autonomy of the will, while recognising that judgment illustrates the purposiveness of nature. Reasoning and judgment are explained as part of personal agency, responsibility and moral law—for example, in Kant's seminal work, the *Critique of Judgment* (Honderich, 1995, pp. 435–9).

REFLECTION POINT

Everyday ethics

Take a minute to think about how you live your life. In your own words, try to identify whether there is one fundamental value or principle in the way you live your life, and in the way you live alongside others.

Many of the philosophers whose work we draw upon in professional ethics wrote about individual ethics—the ethics of decisions made by individuals—such as in virtue ethics traditions. Other philosophers concentrated on group standards or **norms**—such as in descriptive ethics or normative ethics—to search for expressions of acceptable standards. Some ethicists in meta-ethics traditions considered the significance of defining some value or rule or norm identified as right or wrong.

norms
Accepted standards, which can be used to guide conduct.

Early philosophers thought about how we should live our lives and relate to others. They thought about the structure of our society; about what we, as individuals, owe to our society; and about what we can, and should, expect in return. They also thought also about our higher duties to God. Today, religion is often separated from professional ethics, but if it is a part of how you live your life, it would be artificial for you to ignore it. You will see comments and exercises from many early philosophers dotted throughout this book.

Socrates was an important early philosopher. The key feature of his discussions was the way in which participants were encouraged to elicit and question beliefs. Some of the central values that Socrates espoused were justice, courage and pity (Borchert, 2006, pp. 105–6). He tried to define the values through reflection and discussion, like the Reflection you have just completed. This reflection process is also appropriate for your professional life. As nurses advance their clients' interests and strive to maximise the autonomy of their clients, justice and courage have been identified as **virtues** espoused in modern nursing (Beauchamp & Childress, 1994, p. 465).

virtue
Worth or quality of particular moral excellence.

Our **values** form our ethics standards—and they determine what we expect from others. In some ethics frameworks, virtue and the formation of central values is paramount

values
Concepts given worth or importance in life and interactions, making up a value system.

in moral self-development. We probably apply this notion of moral self-development in our own lives without thinking about it. For instance, we do not expect children to be rational and moral in the way that they relate to others and the world because we know that some of this is learnt. We gradually teach them what is expected, what we value, and what we hope that they will value. As they grow older, children begin to recognise that it is not just because these values are advocated by their parents and guardians that makes them desirable as guides for life—they come to value the virtues themselves.

In ancient Greece and Rome, there were forums that were used for debating what was right and virtuous. Learned people were trained to reflect and to hold monologues or debates challenging others to refine their thoughts, actions and reasoning. Socrates and Plato led this tradition, and there was an expectation that people who rose to prominence in society would learn to reflect and debate personal and social ethics. Plato was Socrates' student and Aristotle's teacher. Plato espoused the work on systematic techniques of argument, and emphasised that winning a debate was not the purpose of the discussion. The purpose was to search for the truth. The dialogue between Socrates and Plato became famous, and can be the basis of philosophy exercises to this day (Borchert, 2006, pp. 105–14).

REFLECTION POINT

Virtue and ideals

1 When you think about how you try to live, think about the virtue you aspire to.

2 What is that virtue? How would you define it, and how do you know if you have achieved it?

When you are applying for a job, you should consider the values and objectives of the institution and the aims it pursues; in other words, the way the institutional services are delivered. What service is offered is only part of the information that you need. Values may be expressed in mission statements and visions as they relate to the institution's strategic objectives (Gillon, 1986, p. 2). Even though health care institutions all aim to provide goods and deliver health care, how they define goods, and how they deliver health care can vary subtly. Sometimes this is because of the underlying ethic or morality system of the institution, such as in Catholic and Seventh Day Adventist hospitals.

REFLECTION POINT

Shared goals

Make a note of the goals or mission statement of a health centre, community health service or hospital near you, and of your own prospective or current place of employment.

Once you discover these values, you need to decide whether they are compatible with your ethics and belief system—as the values will affect the way your work is defined and carried out in that institution.

Ethics in health care is really about three things:

- individual ethics and values
- group ethics and values
- professional ethics and values.

Writers on health care ethics who favour different ethics theories and frameworks vary in their approach. Some concentrate on individual virtue, others on group notions of ethics, or on philosophical analysis of ethical stances and values.

You will read more about ethics reflection and the reasoning frameworks that you can choose from for ethics analysis in Chapter 4.

Integrating ethics and skill

Individual reflection on standards, skill and ethics is vital, yet individual reflection alone is problematic. It is difficult to act responsibly without some guidance. Some of that guidance is found in discussion with fellow professionals, and some is found in written form in professional codes. A modern well accepted definition (Barker, 1992), is that a profession is an occupation that:

- is skilled
- requires training to a high level (to which considerable time is devoted, leading to the expectation of relatively high remuneration)
- gives rise to expectations of a high standard of proficiency
- is bound by a code of ethics of ideals of service to society.

INTEGRATED LEARNING AND PRACTICE

Isn't being technically proficient the main objective for any professional?

Technical proficiency is important, of course, but a professional should also recognise that the broader aspects of making the skill available and then delivering the service—and also representing the profession well at all times—are integral to being a **professional**. A professional is a person who has become skilled to a level judged by the profession to be adequate to hold themselves to be competent, and who applies their competencies in keeping with the values and ethics that are acceptable to their body of professional peers.

professional Skilled person with high standards of skill and ethics, which they offer in the service of the community.

code of conduct Comprehensive listing of rules or principles to guide members of a group in their thought and considered action.

Codes of conduct are a form of self-regulation by the group that makes up the profession, stating required and important principles to guide professional practice. Increasingly, professions and health registration boards include performance standards and ethics in the one professional code. Codes of conduct include competencies, and contain detail about what properly equips professionals to deliver services. A code provides practical guidance on acceptable professional standards—and how these should be upheld.

Learning to be a professional is partly about understanding tasks and becoming skilled in them, and partly about becoming able to put those **skills** into action. The skills aspect of professional work is inextricably linked to professional ethics. As Pellegrino has stated, the ethics of a profession are not 'the norms actually followed by professionals, or the professional codes they espouse, but rather the moral obligations deductible from the kinds of activity in which they are engaged' (Pellegrino, 1989, p. 56). So your individual ideals and values—and the skills you learn—are bound together in your sense of professional ethics.

skill
Level of competence in a specific tasks or series of tasks.

Philosophically, the principles that professions seek to uphold translate into moral rules that guide behaviour (Reich, 1978, p. 410). Many different ethical frameworks support, to some extent, the notion of practical rules. Moral rules are especially important in rule forms of deontology and utilitarianism, which regard rules as ethically necessary (Beauchamp & Childress, 1994, p. 45). **Rules** can be formed and adopted so that moral goals may be achieved. While the rules can be formed by individuals, according to Kant, the collective notion of shared rationality implies that rules formed by rational individuals will be shared and will have commonalities (Sullivan, 1989, p. 214).

rules
Derived and specific expression of fundamental principles or ideals that are agreed by a group to have force, in a moral obligation of members of the group to abide by them.

As a professional working in a community of other member professionals, you are expected to:

- share some common 'professional ethics' rules
- have a sense of purpose in expressing those rules
- strive to abide by those rules.

Your strict professional duties can be defined with reference to the rules that your profession adopts. Your goals go further than that: you have a general duty to aspire to the optimal goals—in other words, to go beyond minimum duties. Thus, goals and duties go hand in hand.

In professional and personal life you will encounter the setting of moral rules and the expression of moral ideals. Moral rules may not be left to individual discretion as much as moral ideals. A moral rule is something that must be obeyed, and can therefore form the basis of a list of prohibitions—such as 'Thou shalt not kill'. In contrast, a moral ideal is something that should be strived for; it requires some positive action (Gert, 1992, p. 19).

So, there is a sense that 'lower' limits of behaviour exist and that we should strive for 'upper' ideals. If we should abide by moral rules, we would regard behaviour that breaks these rules with disfavour. We might be forgiving when ideals are not upheld, as long as the person strives for them in the future with a moral imperative to strive towards the aspirational goods (Freckleton, 1996, p. 134). A written code makes this more explicit, and provides members—as well as outsiders—with clear expectations of the rules and ideals that are central to the profession.

It seems appropriate that the group of people who best understand the professional skill and actions involved are ethically active—in effect setting their own goals and limits. It is worrying if outsiders have too much control over the ethics of a profession. As one commentator has stated, 'a morality of those whose hands are clean only because they have the position of an observer, charging others with the responsibility, seems doubtful' (Tomaszewski, 1979, p. 131).

professional code of ethics
Expression of principles, rules, ideals and values of specific professional group, creating responsibility to strive for states, ideals and goals, and to uphold certain rules, in each member professional's conduct.

responsibility
Obligation and duty to fulfil certain tasks or series of tasks.

As **professional codes of ethics** provide guidance on the values and aspirations of a profession, there is little doubt that codes are looked to by the profession and public as a measure of professional approach and standards. The formation of the code is a valuable ethical process and, as explained by Stephen Cohen and Damian Grace, the process of reflection is perhaps ethically more important than eventually enshrining a code (Cohen & Grace, 2005, p. 179). The process of reflecting on professional caring, identifying important aspects of caring, and debating what professionals should aim for continues the tradition of ancient debates, albeit in a different guise. In professional debates, try to remember to keep discussion constructive, as is urged in Plato's tradition. The reflection process is more important than keeping score.

Codes of ethics can be thought of as 'general action guides' for professionals (Reich, 1978, p. 407). In a general sense, they are a form of regulation. As a health care professional, you have a **responsibility** to abide by your association's code of ethics in carrying out your work.

Your code is a potential influence on your conduct, because it can define how you should act, and mould you to conform with your profession's standards. The code expresses a collective responsibility in the ethical conduct of health care by you and your fellow member professionals (Tomaszewski, 1979).

The codes may be evidence of existing ethics standards, rather than creating obligations in themselves. According to Knultgen, the purpose of a professional code is to promote a sense of community among members, to discipline the behaviour of members, and to ensure public trust in professional actions (Knultgen, 1988, pp. 212, 213, 215).

The existence of a code should not replace individual conscience and reflection; we need to distinguish between the teaching of custom (or group norms) and what is moral. Continual assessment of the existing standards in the codes of ethics is needed as part of ethical reflection. This proposition seems simple but many philosophers have pondered why continued reflection on defined principles or rules is still needed.

Joseph Butler wrote extensively on the importance of individual conscience in all matters, emphasising that when conscience was exercised, virtue would be expressed, as he argued that human nature was positive rather than evil (Collinson, 1987, p. 79; Borchert, 2006, pp. 780–4). The philosopher John Rawls thought that principles of conduct, such as those we find in some codes of ethics, were important. He also thought that we need more than principles to bring ethics into action. Rawls distinguished between the principles and the subsequent judgments of value in relation to those principles (Rawls, 1971, pp. 20, 48, 120, 579). Individual and collective judgments are needed before principles are put into practice. So shared contribution to standards will remain important.

You might apply principles slightly differently from another health care worker, or someone else in your own profession. Part of that difference may be the values that you use when you interpret and apply the principle. One of Rawls's points is that the judgments we make may depend on the contractual situation to which the principles and values are applied (the word *contractual* refers to any agreement between people, whether implied or explicit).

We can expect some differences in 'ethical behaviour'. Just because someone behaves differently does not necessarily mean that they are unethical. But it does give us pause for reflection and discussion. The next time you see something quite different in the application

of a principle, think about the values that may have influenced that professional's behaviour, and the contractual situation in which it was applied. You may be witness to extreme values or a contractual situation that puts considerable constraints on professional behaviour.

From time to time, guidelines are updated. As a profession develops and the context in which it operates is required to practise changes, so codes become increasingly defined. You should be ready to be part of the discussion and be alert to changes in context and professional bounds. It is preferable that all professional members actively consider their ethical stance and their stance on standards, and be ready to explain it or pursue further discussion on it.

So, when a person becomes a member of a profession, they become one of the people who help define the **ideals** of the profession. They bring their own ethics to the profession, and their ethics are influenced by what others have defined as appropriate ethical standards for that profession. It is a fluid process of sharing thoughts, and of learning to work together towards a common **good**. (Note: The word 'good' is used as a noun here—it is a thing or a concept, not an adjective.)

All codes of ethics for health care professionals include statements on respecting the integrity and autonomy of each individual. This is a reminder that gaining consent for any therapeutic process is vital. Nursing codes emphasise autonomy, with nursing roles aligned more explicitly with patient advocacy (Seal, 2007, pp. 29–36). The Australian Association of Social Workers emphasise respect for persons, social justice and professional **integrity** in their Code of Ethics (Australian Association of Social Workers, 2010). The subtle differences in codes and the different professional roles that are undertaken can mean that different professionals apply their own particular codes and make different assessments of their responsibilities in the same shared care or interprofessional situation.

ideals
A standard of excellence, which is aimed to be met.

good
A desirable end or object.

integrity
Willingness to actively reflect upon and uphold the highest principles and standards of conduct consistent with roles, responsibilities and duties.

beneficence
The principle of doing good and providing care for others.

non-maleficence
The principle of not harming others, and of minimising harm to them.

autonomy
The principle of allowing and promoting self-rule, of people making decisions about their lives.

justice
The principle of fair allocation of community resources and burdens.

REFLECTION: GENERAL PRINCIPLES IN CODES OF CONDUCT AND ETHICS

You should have at hand your relevant Code of Conduct or Code of Ethics. If you do not already have it, you could try looking up the association website or the relevant registration authority websites. The latest codes outline duties to patients, the community and the profession. Make sure you always obtain updates whenever your code is altered.

Using your own code, summarise the principles and comments of guidance in your code of ethics under the broad headings listed below of **beneficence**, **non-maleficence**, **autonomy** and **justice**.

Beneficence encompasses the obligation to do good, to care for people; non-maleficence is the paired obligation to do no harm to them.

Autonomy is the principle of self-rule, of clients making decisions about their own lives.

Justice is about fair distribution of resources, particularly when the pool of resources is limited. These were chosen by Beauchamp and Childress, as they are principles that can be applied within the different ethics theories and frameworks (Beauchamp & Childress, 1994, pp. 38, 45).

INTEGRATED LEARNING AND PRACTICE

Rules and aspirations in codes

This is an extension question, and can be tackled as a group or individually if you are ready for more complex considerations.

Identify principles that are mandatory, and expressed as a 'rule'—these principles will form a list of things you must do if you accept this role as a professional. Then use your law research skills to identify a parallel law that is the equivalent of this in society.

Next, identify an aspirational principle, such as striving to deliver the best available care. This is not a 'rule', but a guiding principle. Professionals won't be judged as harshly if circumstances prevent them from achieving the aim. Do search—but you are unlikely to find a parallel law for this.

Remember that some responsibilities are specific to each profession. They can include both legal responsibilities and professional responsibilities that professionals are obliged to fulfil—or try to live up to. There is more discussion about professional assessment of standards in Chapter 2.

REFLECTION: GUIDANCE IN CODES

1 Think about one of the basic principles that you, as a registered health practitioner, might find in your board's code of conduct or code of ethics, or your relevant code as a health care worker. (Alternatively, you might like to look at another profession's code.)
2 Think of situations in which you have applied this principle. Make a note of how you have seen others apply it.

Community trust in health care professions and their professional standards is based on the expectation that the community as a whole will ultimately be served by the profession. If this trust is shaken, society may judge that more outside regulation is needed, effectively limiting the power and discretion of professionals. Professions have sometimes refined and discussed their standards precisely because of the threat of such an external imposition of standards.

Interprofessional teamwork

Throughout your health care career you will work alongside different professions and health care workers. This is termed *multidisciplinary*, *interprofessional* or *interdisciplinary* teamwork. When tasks and responsibilities are shared in a health care team, the team as a whole is also responsible for the comprehensiveness of care of the individual patient. You can expect that

different professionals are equipped to deliver different specific aspects of care. One step towards professionals working well together is to understand each other's different skills and objectives in providing care.

It is important that a team ethic of caring is acknowledged, and that teams discuss and define team goals. The discussion should extend to values and ethics, as well as to technical skill and tasks, so that minimum rules and optimal ideals are identified, compatibilities in acceptable aims are recognised, and potential problem areas are identified before they occur in practice. It is a natural extension of professional standards to broaden the discussion to others who are engaged in a similar endeavour.

Because of your shared objectives—and despite your differences—you must learn to work together, because you need each other's skills to provide comprehensive health care. The basic aim of all health professions is to care for clients or patients, to be beneficent, and to serve and protect the health of the community. Health care is a system, partly because that is the most efficient and effective way that our society has available to share the skills of the health care workforce. Society needs you to work well together.

Working as a team does not mean always working 'under' another profession. It means being aware of and working towards goals, and on occasions being 'guided by others who possess greater knowledge and expertise' (Alexandra & Woodruff, 1996, p. 242). Of course, establishing team leadership will depend on the team goals and objectives, and on who has the skills to lead the team towards that goal. Junior residents find themselves learning a great deal from senior unit nurses. Experienced nurses and their favourite doctors appear to work effortlessly. Perhaps they have come to a common understanding of the goals of care in their own context and appreciate each other's skills so much that there is true team harmony in providing that care. You could apply the same assessment of successful teamwork to other professional combinations.

Bear in mind that full discussion is as valuable in reflection as the ultimate decision that you reach. There is a danger that aiming for consensus too early—and sacrificing differences of opinion to achieve that consensus—can hide the difficulty of an issue, or even hide divergent views on an issue (Moreno, 1995). It is a reminder that challenging issues warrant detailed reflection and discussion.

In ethics education at a university health centre in the United States, the complexity of issues that students training in different health professions brought to the ethics discussion was noticed and valued as a benefit to all students. The lecturers felt that when students understood each of the team members' roles and responsibilities, they also further developed their understanding of discharging their ethical obligations to their patients in an appropriate manner (Yarborough et al., 2000, p. 794). So, ethics discussion and decisions cannot be made in isolation from other interdisciplinary team members for them to be realistic and practical.

It's crucial to have guidance on proper behaviour by those with relevant expertise. As Hans Jonas has said, it is especially difficult to define ethical conduct in a technologically complex situation—which modern health care inevitably is. People who have the relevant technological expertise can help to predict the consequences of actions. Without their

help, actions—even if done with good intentions—could easily result in harm to others (Jonas, 1984, pp. 5–6). This has particular relevance for health care teams that combine different sorts of expertise. You should get used to checking matters of professional conduct and professional ethics with the whole team. The minimum is to check with your own professional peers.

The importance of relying on others for guidance is evident even in Kant's otherwise individualist writings, which stress virtue in relation to one's own moral laws. According to Kant, the acceptability of actions to others is important because the praise of others is essential in reinforcing virtuous actions (Sullivan, 1989, p. 29). It is a practical safeguard that you check and discuss matters with your colleagues to see if you have acted properly or if your planned action is acceptable and ethical. It is appropriate that the diverse group of people who together can comprehensively understand the scope of professional skill and actions in health care settings contribute to the reflection.

Learning about how your institution, ward, department or clinic has approached a range of practical issues in the past is a privilege, as you then share in some of the corporate memory. An 'acceptable' course of action may already be defined by other experienced team members. If the legal, regulatory and ethical reasons remain unarticulated, take the time to draw people out so that you understand how issues have been solved in the past. This provides you with a toolkit for approaching challenges in the future.

Checking all perspectives does not mean you lose the capacity to form your own position, even though some reasoning frameworks may minimise the moral authority of any one position. The theory of relativism suggests that there are no hard and fast rules in ethics. Rather, ethics can change depending on the perspectives of key participants in a dilemma and the stance of the group to which they belong. To adopt an extreme relativist position on all matters is quite controversial, but the basic process of searching for perspectives is less controversial. Finding and comparing different possible perspectives on what might be best or right is helpful in identifying if a practical agreement is possible. Harman, a philosopher who has defended relativism, claims that a judgment of proper conduct by one party towards another depends on the agreement between the two parties (Harman, 1975, p. 3). In a professional–client relationship, both parties should agree that what is being undertaken is proper. In the context of a health care team, the team should also agree that it is proper. Remember that they might agree for different reasons. Reaching this agreement does not necessarily mean minimal standards. In any contractual situation, an upper level, beyond a bare minimum, can be negotiated. Teams may choose to strive to go beyond the minimum and aim for an outcome that will raise and uphold standards.

PRACTICE EXAMPLE

Ethics and ethical dilemmas

Jennifer Haines

Jennifer has been a Registered Nurse for 40 years and spent most of those years practising in critical care areas, ICU, CCU, Neurosurgery ICU and Emergency Department.

When working through an ethical dilemma, we must ask the following:

- What is the ethical problem we are trying to solve?
- What are the facts?
- What ethical factors apply to the situation? What does our Code of Ethics say about the situation?
- What ethical factor takes priority in the situation?
- What does the law say about the situation?
- What course of action should an ethical nurse take?

An ethical dilemma

Doctors have been working all day on a patient, reviving them after repeated cardiac arrests. They meet and decide that continuing to resuscitate the patient is not helping the patient and may well be causing harm. They approach the family, who want every measure of treatment continued. The doctors advise against it, but the family insist. The doctors decide that the next time the patient arrests, they will pretend to resuscitate the patient, and that will fail, and the patient will die. The doctors did this, and the patient died.

- Did the doctors behave ethically? Why, or why not?

Practical local regulation

Standards and rules are part of everyday life. For instance, when you go to a local park, you want to relax and have fun. As a law-abiding citizen, you also try to use the public area safely and in a way that does not damage the property or cause harm to other people.

You might see a sign at the park that lists the things you can do in that park—and perhaps lists activities that are prohibited. At the bottom of the sign you will probably find the name of an Act, which is the legislation that gives the general authority for the rules, or the name of a Regulation, which is relied on by the local area to implement specific rules that make the park enjoyable for everyone.

You might find that you are able to walk a dog, but not allowed to let the dog off the leash. There is nothing to suggest you are prohibited from an ordinary, well accepted use, such as a picnic on the grass, but if you see an image of a tent with a cross through it you know that you would not be allowed to camp in the park overnight. These rules are partly about public safety, and partly about sharing the use of the public facility in a fair and reasonable way. You can decide whether to use that park, based on the rules and local regulations. There may be warnings, or advice given on particular risks, such as the grading of a bush walk as 'very steep' or difficult and uneven, meant for experienced walkers, and that you should carry plenty of water. You can then decide whether to embark on the walk given the risks involved.

Regulations are the applied legal and administrative requirements that are made as part of a process of social control and management of a particular process or setting in a specific context. So finding out what the regulations are in that setting is an important first step. Then, your integrity and commitment to upholding standards that are expected of you and behaving ethically—even if other people can't see you—will help you to decide if your plans were fine, or whether you need to rethink what you will do while you are in the park.

Let's look at another everyday example. Before you drive a vehicle, you will have applied for a licence to drive, or a provisional permit to learn to drive. You will have passed a test of some sort to show that you are competent and safe enough for the licence to be issued to you. The licence issued to you will have restrictions: you may be entitled to drive a motorbike or car but not a large truck, or you may be licensed to drive an automatic but not a manual vehicle. When you drive on the road, road rules such as speed limits also apply. These standards, restrictions and rules are all provided to regulate driving so that it is as safe as possible. Parking restrictions also apply for safety reasons—and so that you do not park in a way that is inconvenient to others. The local area is best placed to decide what is acceptable for local conditions, and this is why the speed limits or parking rules applied can vary. Your driving is subject to the regulations of the area that you travel in. Also, it is subject to the type of licence that you have. You have a responsibility to inform the licensing authority if you become unfit to still hold your license, and you have an everyday responsibility to restrict yourself from being behind the wheel if you are temporarily unsafe to drive. Your reflection on the importance of acting within your agreed driving competence, being safe, and respecting road rules is most importantly upheld by you even when others are not monitoring or observing you.

Sanctions can apply when people do not abide by these standards and rules. This is to:

- redress the harm caused
- act as a deterrent for repeated transgressions
- encourage others to uphold the rules because they are important and meaningful standards for our communities.

When you choose to work in the health sector, you can expect that similar restrictions, standards and rules will apply. Health care is a heavily regulated sector as there is a need to protect the safety of the public, and the practical imperative to use public resources wisely. Health facilities are licensed and health care providers are trained to appropriate standards and may also be registered.

Care is taken to make health care delivery as safe as possible for workers, as well as for patients. The training and qualification you have allows you to work in certain roles, and always with some limits. It is your responsibility to find out what local rules and regulations apply to your work in the particular setting that you are working in. For instance, even if you have the necessary skill and qualifications, the scope of procedures that can be undertaken will be different in a small day clinic than a larger hospital. You can't drive at 110 km/h through a local town, and you also need to adjust in every setting so that you use your skills in the most appropriate, safe and effective manner.

Health service institutions always operate within a state or territory and national context, and some regulation is set as subordinate part of the legislative instruments in each jurisdiction. Each health-service setting and institution endeavours to ensure that laws and regulations are complied with and that employees and people presenting to the service are treated lawfully. If any person suffers harm on the premises or through the action of an employee or agent of the institution, institutions can be sued in law as an entity. You will read more about this in Chapter 3.

Following the precise requirements of all relevant regulations is an expected and routine part of the privilege you have accepted in becoming a health professional to serve the public. Each health care institution helps to set the culture of aiming for best practice and compliance with regulations.

Local institutional rules, such as standard operating procedures, prompt you to consider competent and ethical aspects of your practice, including:

- appropriate levels of training and skill for particular jobs
- what care to offer and how to deliver it
- social expectations of what would be a priority in particular situations.

For each health setting, remember that it is as if you are in a local park and on local roads. You should expect that some local standards, regulations and rules will apply, as well as the general laws and codes that guide your conduct. The regulations aim to support the safe, effective and fair delivery of health care in each of our local communities.

Some regulations are like basic road rules, and they will become second nature to you as you build your career in the health sector. Special responsibilities as a health care worker are set out in a practical way in regulations, such as what makes up an adequate health care record.

Shared responsibilities in record keeping

Health care professionals share in the responsibility to keep a health record of the assessment and care that each patient receives. Health records should be accurate and complete; they can be initiated or added to by any health care worker; and they become the basis of noting and assessing progress as the client is engaged in treatment.

An adequate record was defined in the *Health Insurance (Professional Services Review) Regulations 1999* (Cth), under section 5, as follows:

> **5 An adequate record**
>
> For the definition of adequate and contemporaneous records in section 81 of the Act, the standard to be met in order that a record of service rendered or initiated be adequate is that:
>
> (a) the record clearly identify the name of the patient; and
>
> (b) the record contain a separate entry for each attendance by the patient for a service and the date on which the service was rendered or initiated; and
>
> (c) each entry provide clinical information adequate to explain the type of service rendered or initiated; and
>
> (d) each entry be sufficiently comprehensible that another practitioner, relying on the record, can effectively undertake the patient's ongoing care.

Under section 6, it must be contemporaneous—that is, 'completed at the time the practitioner rendered or initiated the service', or as soon as practicable.

Health departments recognise the importance of health records, and issue guidelines like these:

> The main purpose of a health care record is to provide a means of communication to facilitate the safe care and treatment of a patient/client. A health care record is the primary repository of information including medical and therapeutic treatment and intervention for the health and well being of the patient/client during an episode of care and informs care in future episodes. The health care record is a documented account of a patient/client's history of illness; health care plan/s; health investigation and evaluation; diagnosis; care; treatment; progress and health outcome for each health service intervention or interaction.
>
> *(New South Wales Government, 2012, p. 2)*

Making health records or medical records is not just the responsibility of medical practitioners. It is a responsibility shared by different care providers in different clinical settings. The basic requirements are that records:

- have entries that are legible and non-erasable
- are identified as relating to a particular person
- are organised chronologically
- are made available to authorised persons.

The accuracy and completeness of the records you make is relied upon by others, and is an essential supplement—but not a replacement—for a full verbal handover between staff (O'Brien, 2002).

Taking notes and making records is one of the key skills of health professionals. It is vital in terms of effective teamwork. Other health practitioners and workers who care for the same client need be able to refer to detailed information about the client without asking for the same information all over again. They also need to know the exact nature of care that has already been delivered so that future care is safe, informed and effective.

Inadequate, inaccurate or misleading documentation by a nurse in any health record or report can be found to amount to unsatisfactory professional performance/conduct,

REFLECTION: ACCURACY AND RECORDS

Think about the following example, which is from a Masters course in clinical ethics:

> A nurse makes a mistake with the amount of medicine he dispenses to a patient. He realises the mistake, as does a fellow nurse. The patient's records show that the correct amount has been given. Neither corrects the records, nor reports the mistake to the charge nurse or the attending doctor.
>
> *(Berglund, Mitchell & Cox, 1993, pp. 195–6)*

1 What do you think could be the effect of the mistake?

2 What ethics responsibility is being degraded by not rectifying the records?

and may be considered by a tribunal, panel or committee to be unprofessional conduct. In one case, a caution to mark the disapproval of the conduct was ordered, and conditions to safeguard the public in the future were put in place for the nurse practitioner (AHPRA, 2016).

All health care workers need to be vigilant in upholding responsibilities in their roles. Team work and accountability to others is regulated in some aspects of record keeping.

For instance, drug regulations have a practical impact on many routine aspects of health care, including making accurate records of the handling and administration of them. Rigorous prescribing and supply restrictions apply to S4D and S8 drugs and these restrictions have particular significance for the health professionals handling and administering them. The *Standard for the Uniform Scheduling of Medicines and Poisons* (SUSMP), is given effect through each state or territory's legislation (Australian Government, 2018).

These drugs are called Schedule 4D (S4D) and Schedule 8 (S8) drugs because they are listed in regulation in the schedules, which are then read with the relevant legislation. Schedule 4 covers prescription-only medicines, and particular further restrictions apply to those listed in Schedule 4D, such as benzodiazepines and amphetamines. Schedule 8 drugs are controlled drugs, and include opiates. The restrictions are because of the dangers associated with the drugs: they have addictive qualities, and cause harmful effects if used in excessive quantities or over lengthy timeframes.

When doctors prescribe these drugs, which nurses then administer, the combined regulatory framework is made up by the Commonwealth schedules, as well as Therapeutic Goods Administration (TGA) requirements, the state legislation, and the local health facility standard operating procedures, which clearly set out staff members' responsibilities and practical procedures to comply with these requirements.

One example of local procedures is that of the Royal Hospital for Women in Sydney, which sets out principles for the storage, supply and administration of the drugs. For instance, the nurse in charge of a ward is responsible for the storage of the S4D and S8 drugs, which are stored in a locked dangerous drugs cupboard, except if needed on a designated trolley for anaesthetic purposes. A nurse employed in a permanent capacity carries the key, and

recording and checking requirements apply. Two members of staff, including one registered nurse or registered midwife, must check out and witness administration of all S4D and S8 drugs. Requirements for recording drugs in a register, and documenting and witnessing wastage or spillage are also strict (Royal Hospital for Women, 2016).

The further significance of the records, including the drug register, and the records of administration, is that they are legal documents. When you sign off any step in the storage, supply or administration of these drugs, you are declaring that the step you document and place your signature or initials next to has actually occurred. This is a matter of significant professional integrity and responsibility. You are entrusted with this responsibility given the trust that the community places in you as a health professional. There are potentially serious legal consequences for making a false record. The community trusts that the integrity of the professional will provide the motivation to ensure that regulatory requirements are carried out.

REFLECTION: CAN YOU SIGN OFF PLEASE?

Imagine that you are part of the nursing team working in a particular institution. Find out more about the rules that would apply in the place you work. Look up that institution's regulations on the handling and administration of S4D and S8 drugs to refresh your understanding of what your responsibilities would be if you were asked to witness the administration of these drugs to a patient.

1 Share what you have found out with your colleague, so that they are up to date with the regulations and know that you are fully aware of your regulatory responsibilities. How would you approach this in your team setting? What level of formality do you feel comfortable with? The context will make a difference to the type of language you would use to summarise what you know.

2 Think about what you would say if you are asked to sign off on a process in order to satisfy the regulatory requirements—but you had not actually witnessed each step of the process that you should have seen.

Consistent with all administrative law and application of administrative regulations, if the regulations are too onerous, or impose too great a burden on any one person or organisation, it is possible to rebalance the burden imposed. (You will read more about this in Chapter 3 'How the law shapes health care'.) Checking each other's decisions in more routine procedural issues is part of normal and expected practice. At the moment, the regulation of having two personnel sign off S4D and S8 administration is not thought to be too onerous. It is clear what each person is responsible for. The requirements are clear and protect the public interest.

Legislation and regulatory mechanisms to weigh competing public interests in safeguarding and allowing or limiting access and use of personal health information

are discussed in Chapter 6 'Personal information privacy and public interests'. Chapter 10 'Regulation and availability of health and community services' includes a discussion of national funding and billing regulations, and of local resource allocation discretionary policy.

Continual reflection and development of standards

It is part of being a professional to use the skills available to you in both the technical and procedural and reflective spheres, and to identify a responsible way forward. A commitment to the further refinement of standards or rules is also central to being a health professional. This is because, together with others, you form the health care profession.

Standards are also continually reflected on and developed, partly due to the dynamic nature of law and ethics and the complementary relationship between the two. Lower limits are defined and debated, and optimal standards are more readily defined as a result. The interplay is a social process, and to treat law and ethics as totally separate would be artificial. Broader societal expectations and standards are applied by law. Such laws are expressions of the lower limits of behaviour that society will tolerate.

Professional guidelines and regulations—although derived from groups' mores and ethics—sometimes have force as important standards because of statute law and common law principles and doctrines. These limits are constantly debated by politicians, and can change. The process of debating new laws exposes the reasoning behind the laws. There is an opportunity to view this in parliamentary debates or law reform discussion documents. Throughout this book, you will notice examples of discussions from law reform processes.

You need to stay up to date, because abiding by standards and undertaking ongoing reflection on responsible practice is part of your professional obligation.

Summary

This chapter provides the foundation for understanding the integrated standards in health care. You have learnt that standards and rules are part of everyday life and also everyday work life, and that laws, regulations and ethics work together to provide that guidance on acceptable and appropriate standards. You have learnt a little about the structure and function of law and ethics from ancient and modern philosophers. When general principles are provided in law and ethics, the application of the principles is assisted by regulation. You have learnt that regulation contains the more precise details on how the standards are to be applied in practical contexts. The standards provide guidance for you. What is also needed is your active aspiration to act with integrity so that the relevant standards become part of your everyday practice.

STUDY QUESTIONS

1. Why is jurisdiction important in thinking about standards and rules?
2. What do law, ethics and regulations have in common?
3. Write the opening paragraph of an essay on 'The central importance of professional integrity in health care'.
4. Outline, in detail, with references, three significant regulatory requirements for record keeping in health care.
5. Have a glossary quiz. Turn to the glossary and select any glossary term that was covered in Chapter 1. (The numbers in brackets show you in which chapter the glossary term was defined.) See if you can define each term, and explain what it means when applied in a legal, ethical or regulatory context that you have read about in this book.

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